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The American
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DEMOCRATIC IDEALS AND REPUBLICAN INSTITUTIONS IN INDIA

BENOY KUMAR SARKAR

To appreciate the political theories and institutions of Asia in the proper historical perspective, it is necessary to remember that, in spite of Switzerland, universal suffrage and the initiative and referendum are essentially young phenomena in Eur-America; and that republicanism cannot be pronounced to be a historic trait of the occidental mind.

On the other hand, it is apparent that the liberal political movements in Young Asia have, if at all, only very remote blood-relationship with the theories and institutions developed in its past history. The Japanese constitutional monarchy, the ideals of the Young Turk, the Chinese republic, as well as the nationalist activities in Egypt, Persia and India, are chiefly based on the modern Eur-American achievements. These sources can be briefly mentioned as: (1) the English parliament, (2) the American federation, (3) the "ideas of 1789," (4) the idealism of Fichte and Schiller, (5) the socialism of Karl Marx and Louis Blanc, (6) the political mysticism of Joseph Mazzini, and, last but not least, (7) the philosophy and methodology of John Stuart Mill.

Within these limitations it should be possible to define the rightful place of the Asians in a scientific study of comparative politics.

ORIENTAL POLITICAL PHILOSOPHY

Writers on the history of political theory make it a point to quote democratic verses from the Bible. We are asked, for example, to note the following statement of St. Paul: "There can be neither Jew nor Greek, there can be neither bond nor free, there can be no male and female; for ye are one in Christ Jesus."

Notions like this constitute a large part of Chinese and Hindu classics. Bulky as they are they can be mainly grouped under the formula: "All men are morally and spiritually equal." The Pauline declaration is almost a chip from Vedantic monism.

Moh-ti (*c* B.C. 500–420), "the only Chinese who can truly be said to have founded a religion," was the preacher of universal brotherhood. Mencius (B.C. 373–289), the great Confucian philosopher, said: "Moh-ti loved all men, and would gladly wear out his whole being from head to heel for the benefit of mankind." This doctrine of universal altruism is, says Suh Hu in *The Development of Logical Method in Ancient China*, a repudiation of the Confucian principle of love decreasing with the remoteness of relationship. Hui Sze, the neo-Mohist dialectician of the fourth century B.C., also taught "Love all things equally; the universe is one."

In Islam the social equality of all "believers" is proverbial. The brotherhood of the Mohammedans without distinction of race is the most characteristic tenet of their faith. The following is the injunction of the Koran[1] on this point:

"If two parties of the believers contend with one another, do ye endeavor to compose the matter between them . . . . . make peace between them with equity . . . . . Verily the true believers are brethren; wherefore reconcile your brethren . . . . . neither defame one another; nor call one another by opprobrious names."

The Hindu *Puranas* also are replete with instructions like the following: "Everywhere, O Daityas (Titans), ye should per-

[1] Ch. XLIX (Sale's translation).

ceive the equal; for the realization of equality (*samatva* or sameness, oneness, etc.) is the worship of God."[2]

This democratic conception of equality or Pauline oneness is essentially different from the idea of Aristotle, who believed in the fundamental inequality of man, to whom, therefore, slavery was a "natural" institution. But this is the common residuum of the teachings of the Chinese, Mohammedans, and Hindus of Asia, as well as the Stoics of the Hellenistic world, and the Church Fathers and Canonists of medieval Europe, in spite of sundry differences. Indeed, the doctrine is bound to remain the most acceptable postulate of thought as long as there are men and women to take interest in religion and morals.

There are, however, sentiments of a more directly democratic character in oriental political philosophy. The Chinese classics, especially the Confucian *Shu-king* (Book of History)[3] and the Mencian Books,[4] and the Hindu *neeti-shastras* (treatises on statecraft), *dharma-shastras* (treatises on law), and epics (especially the *Mahabharata*) contain frequent discussions as to the restraints on royal absolutism, the responsibility of ministers, and the authority of the people.

The whole political theory of the Chinese is in fact given in a nutshell in the dictum of Mencius that "the most important element in a state is the people; next come the altars of the national gods; least in importance is the king." Chinese mentality has thus been nurtured on a tradition which is diametrically opposite to the absolutism of the *Leviathan* and the divine right theory of the *Patriarcha*. "It is treated almost as a constitutional principle that when the king of China misbehaves it is the duty of the most virtuous and powerful of the provincial princes to depose and succeed him. . . . . This is not the only point on which the political philosophy of ancient China was advanced and revolutionary."[5]

[2] *Visnu Purana*, Ch. XVII.
[3] Pt. II, Bk. II, ch. i, 6; ch. ii, 17, 18; Pt. IV, Bk. III. (Legge's trans.)
[4] Bk. I, Pt. II, ch. iv, 10; ch. viii, 2, 3; Bk. V, Pt. I, ch. v, 8; Pt. II, ch. ix, 1.
[5] Simcox's *Primitive Civilizations*, Vol. II, p. 18.

It is in the light of this ideal that we can understand the significance of the wording of the edict by which the last Manchu (Dowager Empress) formally declared the throne vacant and invited the Republic to step into the shoes of the monarchy. The "abdication" edict records the "desire to follow the precepts of the sages of old who taught that political sovereignty rests ultimately with the people." It has restated the Rousseauesque Mencian creed: "By observing the nature of the people's aspirations we learn the will of Heaven." Verily, *vox populi vox dei* is almost a truism to the Chinese.

THE DOCTRINE OF RESISTANCE IN HINDU THOUGHT

Equally radical ideas about the authority of the people occur in the political philosophy of the Hindus. According to Shookra, the Hindu Mencius, who during the earlier centuries of the Christian era preserves for us some of the past traditions, "the ruler has been made by Brahma (the highest God) but a servant of the people, getting his revenue as remuneration. His sovereignty, however, is only for the protection of the people."[6] The king is described as a wage-earner by Baudhayana in his law-book.[7] As a corollary to this notion, the king, like any other public servant or individual in the state, is liable to fines for violation of the law. This is stated categorically by Manu.[8]

The dignity of the people is adumbrated by Shookra in a most merciless manner. He admits the importance of the office of kingship, but is not prepared to concede any distinction between man and man. Thus asks he, "does not even the dog look like a king when it has ascended a royal chariot? Is not the king justly regarded as a dog by the poets?"[9] The idea is that the king is as good or as bad as any other human being. There is no extra sacredness in the person of the king.

[6] Ch. I, lines 375–376; Ch. IV, sec. ii, line 259. My English translation of *Sukra-niti* is based on the Sanskrit text edited by Oppert, and forms Vol. XIII of *The Sacred Books of the Hindus* (Panini Office, Allahabad; Agents: Luzac and Co., London).

[7] I, 10, 18, 1, *The Sacred Books of the East* (ed. Max Müller).

[8] Ch. VIII, verse 336.

[9] Ch. I, lines 745, 746.

Shookra does not want to see the majesty of the people converted into a dead letter. So he advises that the king "should dismiss the officer who is accused by one hundred men."[10] Here is one of the agencies by which public opinion is brought to bear on the state. This is the doctrine of recall in embryo.

The rights and interests of the people are, according to the practice in the *Mahabharata*, safeguarded by the ministry.[11] It is almost a postulate with all Hindu writers on *neeti* (statecraft) that the ministers are the people's representatives and guardians. They are intended to be a check on the royal power. As Bharadvaja remarks, they constitute "the sole prop of the state."[12]

Arbitrary monarchy has no place in Shookra's idea of legitimate authority. "The monarch who follows his own will is the cause of miseries and soon gets estranged from his kingdom and alienated from his subjects." The result is a revolution in the state. This can be avoided, according to his advice, if the opinion of a "meeting" checks and controls the actions of the king. The wise ruler should, therefore, "abide by the well-thought-out decisions of councillors, office-bearers, subjects and members attending a meeting, never by his own opinions."[13]

Exclusive government by the one is also unequivocally ruled out of order in the *Matsya Purana*[14] and the *Agni Purana*.[15] "The king must not decide on the policies as one (i.e. quite alone)." (*Naikastu mantrayen mantram.*) The evils of such a rule are described by Kamandaka,[16] who, as a writer of *neeti-shastra*, is older than Shookra. Even in Kautilya's *Artha-shastra*[17] (fourth century B.C.), the bible of imperialism, the council of ministers is an essential estate of the realm.

[10] Ch. I, line 755.

[11] Hopkins' "Social and Military Position of the Ruling Caste in Ancient India as Represented by the Sanskrit Epic" in the *Journal of the American Oriental Society*, Vol. XIII, 1889, pp. 143, 144, etc.

[12] *The Artha-shastra*, Book V, Ch. IV (Shamasastry's trans. in the *Indian Antiquary*, 1909–1910).

[13] Ch. II, lines 5, 6, 7, 8.

[14] Ch. 220, verse 37.

[15] Ch. 225, verse 18.

[16] *Neeti*, Ch. XI, verse 75 (Sanskrit text in the Bibliotheca Indica Series).

[17] Book I (Shamasastry's trans. in the *Mysore Review*, 1906–1908).

Again, according to Shookra, it is not enough that there is a body of ministers in the state. They must be powerful enough to control the king. They must not be merely the "king's men." "Can there be prosperity in a kingdom," he asks "if there be ministers whom the king does not fear?" And he defines "good ministers" as such persons "whose control the king fears."[18] Consistent with this idea is the theory that the rejection of the ministers' advice by the king is tantamount to tyranny. "The king who does not listen to the counsels of ministers about things good and bad to him is a thief in the form of a ruler, an exploiter of the people's wealth."[19]

But the legally constituted council of ministers, "the few," may often fail to bring to bay an arbitrary Charles I, the Chow in Mencius' story. Shookra has discussed such a contingency and has found in the ultimate power of the people the only solution of such problems. Should the councilors have been browbeaten by the king, "the unity of opinion possessed by the many is more powerful than the king. The rope that is made by a combination of many threads is strong enough to drag the lion."[20]

Logically, therefore, the Hindu political thinkers have been, as a rule, advocates of active resistance. According to Kautilya the nemesis of tyranny is expulsion. The *Mahabharata*[21] justifies regicide on the part of the people (*tam hanyuh prajah*) if the king is not a "protector" and "leader" but one who "spoils" or ruins and "demolishes" or destroys. According to Manu,[22] the king who through foolishness tyrannizes over his own state is very soon "deprived of his kingdom and life together with his kith and kin. As the lives of living beings perish through torture of the body, so the lives of kings also are lost through torturing the kingdom." And *Shookra-neeti*[23] is as emphatic as the *Mahabharata* in its advice to the people regarding the treatment of a tyrant. "If the king is an enemy of virtue, morality, and

[18] Ch. II, lines 163, 164.
[19] Ch. II, lines 515, 516.
[20] Ch. IV, Sec. vii, 830–833, 838, 839.
[21] Book XIII, ch. LXI, 32.
[22] Ch. VII, verses 111, 112.
[23] Ch. II, lines 549–552.

strength, the people should expel him as the ruiner of the state." And for the maintenance of the state "the priest with the consent of the *prakriti* (the council of ministers) should install one who belongs to his family and is qualified."

Historical evidences and legendary traditions show that these notions about the popular source of political authority were not mere copybook maxims. The minister I Yin confined the sovereign Tai Chia temporarily in a palace at Tung near the remains of the former king "until he gave proof of reformation." When Kung-sun Chow asked Mencius whether worthies being ministers might indeed banish their vicious sovereigns in this way, he answered: "If they have the same purpose as I Yin, they may; otherwise it would be usurpation."[24] In India, King Bimbisara[25] had to abdicate in favor of his son because he had violated the law of the land. And an unalloyed democracy was the polity in operation during the first period of the Mohammedan Caliphate, when every "believer" had the right to be a councilor.

But, on the whole, these theories of oriental political philosophy should be evaluated in the same way as those in medieval Europe. In the first place, as Mr. Figgis remarks,[26] we are always in danger of reading our thoughts into the words of the ancients, of drawing modern deductions from non-modern premises. In the second place, such speculations cannot be wholly taken as the outcome or reflex of actual popular developments. The democratic ideals of philosophers, the pious wishes of moralists as to the right conduct of statesmen, or the admonitions by sages and "superior men" do not necessarily indicate the existence of republican institutions.

Not only in political theory, but in political development, also, Asia's record is to a considerable extent parallel to that of continental Europe down to 1789. For all practical purposes it is despotism, arbitrary even when "enlightened," that has been the norm in the development of European polity. And the

[24] Mencius, Book VII, Part I, xxxi.
[25] Beal's *Buddhist Records*, Vol. II, p. 166.
[26] *From Gerson to Grotius*, p. 31.

checks and restraints casually imposed on it by the assemblies have had no cumulative effect, except in England, in the making of constitutionalism. If students of political institutions were less accustomed to read into past achievements the meaning of the latest phases of popular sovereignty, they would find that the republicanism of today has really had no precedent either in classical or feudal Europe. And if an unprejudiced investigation of a searching character were attempted in the field of Asian political institutions for the same periods, the effort would lead to a discovery of the "doubles" or replicas and analogues of what the occidentals have been familiar with among themselves. Political science would then recognize that, after all, Asia's experience has not been distinctively "Oriental," but that, what should be assumed *a priori*, man has been fundamentally the same "political animal" of Aristotle both in the East and the West.

THE REPUBLICS OF ANCIENT INDIA

Republics with sovereign authority must have originated very early in India.[27] Some of them survived with complete or modified independence down to the fourth century B.C. These are mentioned, not only in Buddhist and Jaina records, but also in the Greek and Latin literature on India and Alexander,[28] as well as in the Sanskrit epics and treatises on politics.

The Hindus of the Vedic age were familiar with republican nationalities. Among the Uttara Kurus and the Uttara Madras the "whole community was consecrated to rulership," in the language of the *Aitareya Brahmana*.[29] Such polities were called *vairajya*, i.e. kingless.

Republics are described in the *Mahabharata* as invincible[30] states in which the rule of "equality" is observed (*sadrishah*

[27] Kashiprasad Jayaswal's "Introduction to Hindu Polity" in the *Modern Review*, Calcutta, May–July, 1913; Narendranath Law's "Forms and Types of States in Ancient India" in the same journal, September, 1917.

[28] Megasthenes' *Fragments*, L, LVI; Hopkins' article in the *Journal of the American Oriental Society*, XIII, 136.

[29] VII, 3, 14.

[30] *Shanti-parva*, ch. CVII, verses 30–32.

sarve . . jatya . . kulena). "Neither prowess nor cleverness can overthrow them; they can be overthrown by the enemies only through the policy of division and subsidy."

The men who constituted the executive of such kingless polities were called *rajan*[31] or kings. The title reminds one of the impression which the Senate of republican Rome left on the emissaries of Pyrrhus of spirus. They described it as an "assembly of kings."

During the lifetime of Shakyasimha, the Buddha (B. C. 557–477), the Sakiyas and the Vajjians were the most important republican clans in the eastern provinces of India. The territory of the Sakiya republic covered about fifty miles east to west, and thirty or forty miles southward from the foot of the Himalayas. The population numbered about one million.

The Videhas had at first been monarchical with jurisdiction over an area twenty-three hundred miles in circumference. But they abolished the regal polity, and joined the Vesali and six other peoples to form the powerful Confederacy of the Vajjians.

The administrative and judicial business of the Sakiya republic was "carried out in public assembly, at which young and old were alike present, in the common mote hall. A single chief . . . . was elected as office-holder presiding over the sessions, and if no sessions were sitting, over the state. He bore the title of *raja* which must have meant something like the Roman consul or the Greek archon." Besides this mote hall at the principal town we hear "of others at some of the other towns. And no doubt all the more important places had such a hall or pavilion."[32]

In the United States of the Vajjians "criminal law was administered by a succession of regularly appointed officers: justices, lawyers, rehearsers of the law maxims, the council of the representatives of the eight clans, the general, the vice-consul, and the consul himself. Each of these could acquit the accused. But if they considered him guilty each had to refer the case to

[31] Rhys Davids' *Buddhist India*, pp. 22, 41.
[32] *Ibid.*, Ch. II.

the next in order above them, the consul finally awarding the penalty according to the book of precedents."[33]

Buddha himself was a stanch republican in political views. We have the following conversation between him and his disciple "the venerable Ananda," in the *Maha-pari-nibbana-suttanta:*

"Have you heard, Ananda, that the Vajjians foregather often and frequent the public meetings of the clans?"

"Lord, so I have heard," replied he.

"So long, Ananda," rejoined the Blessed One (Buddha), "as the Vajjians foregather thus often, and frequent the public meetings of their clan, so long may they be expected not to decline but to prosper."

And in like manner questioning Ananda and receiving a similar reply, the Exalted One declared as follows the other conditions which would ensure the welfare of the Vajjian Confederacy:

"So long, Ananda, as the Vajjians meet together in concord, and carry out their undertakings in concord . . . . so long as they honour and esteem and revere and support the Vajjian elders . . . . so long may they be expected not to decline but to prosper."[34]

It was not in a quietist's manner that Buddha tried to realize his ideas. He was an active organizer. From the same text we catch a glimpse of his republican propaganda. He says: "When I was once staying . . . . at Vesali at the Sarandada shrine I taught the Vajjians these conditions of welfare."

These are three of the "seven conditions of welfare" in the political philosophy of Buddha. And he was militant enough to maintain this republican creed even when pitted against monarchy. Ajatasatru, the king of Magadha, had been contemplating the annihilation of the Vajjians, "mighty and powerful though they be." But Buddha rose to the height of the occasion and confidently declared: "The Vajjians cannot be overcome by the king of Magadha, i.e. not in battle, without diplomacy or breaking their alliance." Had the Athenians a greater champion

[33] *Ibid.*, Ch. II.

[34] *Dialogues of the Buddha*, Vol. II (translated by Rhys Davids).

of popular sovereignty in Demosthenes when threatened by the "barbarian" of Macedon?

Coming down to a later period, we find that it was with the powerful military republics that Alexander had to measure his strength in his march through the Punjab and Sindh (B.C. 326).[35] The most important of them were the Arattas, the Ksudrakas, the Khattiyas, and the Malavas. The political constitution of the city of Patala, near the apex of the delta of the Indus, was, according to Diodorus,[36] drawn "on the same lines as the Spartan." For in this community "the command in war vested in two hereditary kings of two different houses, while a council of elders ruled the whole state with paramount authority." The republic of the Arattas[37] (*Arastrakas*, i.e. kingless) came to the help of Chandragupta Maurya when a few years later he commanded a successful crusade against the Greeks of the Indian borderland.

The number of republican states during the second half of the fourth century B. C. was large enough to draw the attention of Kautilya, the Hindu Bismarck. As these petty popular polities were a nuisance, obstructing the achievement of an all-Indian nationalism, the finance minister advised his master Chandragupta to use blood and iron in order to exterminate them. The method of his *Artha-shastra* is the same as that propounded about eighteen hundred years later in the *Prince* of Machiavelli, the first "nationalist" of Europe.

The republics were, however, considered by Kautilya as very valuable assets. "The acquisition of the help of republics (*gana*) is better than the acquisition of an army, an ally, or profits."[38] Before undertaking to destroy them by force of arms, therefore, the would-be *dominus omnium* or *sarva-bhauma*, i.e. the imperialist nation builder, should, says he, make it his duty to win them

[35] Smith's "Position of the Autonomous Tribes of the Punjab" in the *Journal of the Royal Asiatic Society*, 1903, pp. 685–702.

[36] McCrindle's *Invasion of India by Alexander* (ed. 1896), p. 296.

[37] *Ibid.*, p. 406.

[38] Book XI, ch. 1, *The Indian Antiquary*, 1910, pp. 116–118. Mr. Shamasastry translates *gana* by "corporation." The context requires that it should be "republic."

over to the cause of a unified empire-state. And, of course, as the end justifies the means, Walpolian bribery and corruption might be freely practiced. From the impeachment of Aeschines by Demosthenes, as also from the Philippics of the orator, we know that the "Emathian conqueror" liberally availed himself of the Kautilyan methods in order to demoralize and subjugate the free cities of Hellas.

The Hindus and the Hellenes were thus simultaneously marching along the same roads of political experience. And the earliest Asian republics had the same fate as the European. In B.C. 338 Philip crushed the little republics of Greece and founded the Macedonian empire. A few years later (B.C. 321) Chandragupta founded the first empire of a united India, and became *chakravarti, chaturanta,* or *sarva-bhauma,* the "lord of *universitas quaedum,*" to use an expression from Bartolus. The empire swallowed up the lesser monarchies which had reared themselves on the graves of clusters of republican sovereignties.

The earliest Hindu polity was, however, similar to that with which students of constitutional history are familiar in Homeric literature. It was the tribal organization based on the autonomy of the self-governing communities.

The nucleus of civic life was the assembly. The same Aryan institution was called *agora* in Greece, *comitia* in Rome, *gemot* among the Saxons, and *sabha* among the Hindus. This assembly of the whole folk, variously called *sabha, samiti, samsad, samgati,* etc., was the legislature, as well as the judiciary, nay, the army too. The temper of the people was vehemently democratic; the village, or rather the tribe, was the unit of political life; administration was carried on by public discussion; animated speeches must have been a characteristic feature of that society.

In the *Atharva Veda* (*c* B.C. 1000–800) we listen to an almost modern harangue in the interest of political unity and concord:

"Do ye concur; be ye closely combined; let your minds be concurrent; as the gods of old sat concurrent about their portion.

"Be their counsel the same, their gathering the same, their course the same, their intent alike; I offer for you with the same oblation; do ye enter together into the same thought.

"Be your design the same, your hearts the same, your mind the same, that it may be well for you together."[39]

Public speaking was cultivated as an art of political life. Members came to the *sabha* with speeches well prepared. Success in the assembly was an ambition of life. In the following lines we catch an orator in the green-room, so to speak, making himself ready for the debate and praying for victory in it:

"May my foe by no means win the dispute; overpowering, overcoming art thou; smite the dispute of my counter-disputant. . . . .

"Do thou smite the dispute of him, O Indra (God), who vexes us; bless us with abilities, make me superior in the debate."[40]

Within the assembly itself there was keen competition among the members each to carry his own point. Each wanted to win over the whole audience to his way of thinking.[41] Here is a demagogue praying for the effects of an oratorical hypnotism, as it were:

"With whom I shall come together, may he speak to aid me: may I speak what is pleasant among those who come together, O Fathers. . . . .

"Whoever are thine assembly-sitters let them be of like speech with me.

"Of those that sit together I take to myself the splendour, the discernment; of this whole gathering make me, O Indra, possessor of the fortune.

"Your mind that is gone away, that is bound either here or here—that of you we cause to turn hither; in me let your mind rest."

All these debates and deliberations in the assembly were but accessories to the principal end of Vedic life, viz., warfare and annihilation of the enemy. The Hindus of the colonizing period described in the Vedas were preëminently fighters. Success in arms was the *leitmotif* of their songs, sports, rituals and ceremonies. And as in the Teutonic polity, in the Hindu also the "war begat the king."

[39] VI, 64 (ed. and trans. Whitney and Lanman).
[40] *Atharva Veda*, II, 27.
[41] *Atharva Veda*, VII, 12.

THE VEDIC KINGSHIP

We do not have facts relating to the exact historical origin of kingship among the Vedic tribes. But the extremely outspoken attitude and the general absence of restraint manifest in some of the "election-hymns" indicate the essential equality and comradeship of the ruler with the ruled. Probably the will of the people had transformed the occasional leader (*heretoga*) for war purposes into a permanent chief or king. The *Aitareya Brahmana*[42] is cited by Kashiprasad Jayaswal in support of this view: "The Devas and the Asuras were fighting . . . . . the Asuras defeated the Devas. The Devas said: 'It is on account of our having no king that the Asuras defeat us. Let us elect a king.' All consented."

Once instituted, kingship remained elective for a long time. The inauguration of a king "who has been called or chosen" by the people is thus portrayed in the *Atharva Veda:*

"Unto thee hath come the kingdom; with splendour rise forward; (as) lord of the people, sole king, bear thou rule; let all the directions call thee, O king; become thou here one for waiting on, for homage.

"Thee let the people choose unto kingship; thee these five divine directions . . . . .

"Like a human Indra, go thou away; for thou hast concurred in concord with the castes (?); he here hath called thee in his own station. . . . . .

"The wealthy roads, of manifoldly various form, all assembling, have made wide room for thee; let them all in concord call thee."[43]

The people not only elected new kings, but sometimes also restored an expelled king against rival claimants. Thus we read:

"Thy friends have chosen thee against them; Indra and Agni, all the gods have maintained for thee security in the people.

"Whatever fellow disputes thy call, and whatever outsider—making him go away, O Indra, then do thou reinstate this man here."[44]

[42] I, 3, 14.
[43] III, 4.
[44] *Atharva Veda*, III, 3.

It was in such an environment of popular ascendency that the Vedic king had to lord it over the world and lead his hosts, like Agamemnon against Troy, "conquering and to conquer." The all-seeing *sabha* made it impossible for the one to monopolize all the functions of the state. The few, if not the many, still controlled the public business as in the Tacitean *civitas* and the early Greek settlements. Besides, the people had the greatest weapon in their hands—the power of expelling or deposing the king.[45]

Kingship became hereditary in India as in other countries. But the Vedic right and practice of election[46] were not forgotten in subsequent ages. The tradition is kept up in the *Mahabharata*.[47] We read in it of the election of Shantanu as against Devapi, of Pandu as against Dhritarastra, of Yudhisthira as against Duryyodhana, etc.

The sovereignty of the people maintained itself not only in the theoretical right of election, but also practically in the elaborate ceremonies which attended the coronation of the king. One of the incidents in the investiture was the *pratijna*, the vow, promise, or oath, by which the king had to bind himself to the state. The *pratijna*[48] is thus worded: "I shall always regard the *bhauma* (country) as the Brahma (the highest God). And whatever is to be prescribed as law on the basis of statecraft I shall follow without hesitation, never my own sweet will." The coronation oath thus made the king subordinate to law. It was, in fact, the basis of a *samaya*[49] or compact[50] between him and the people.

The right of election did not become a dead letter in more historical times. In the second century A.D. Rudradamana[51]

[45] *Shatapatha Brahmana*, XII, 9, 3, 3 (*The Sacred Books of the East*).

[46] Jayaswal's "Rituals at Hindu Coronation: their Constitutional Aspects" in the *Modern Review*, Calcutta, January, 1912.

[47] Hopkins' article in the *Journal of the American Oriental Society*, XIII, pp. 137, 139, 143.

[48] *Mahabharata, Shanti-parva*, Ch. LIX, verses 106, 107.

[49] *Ibid.*, LXVII, 17, 24.

[50] Compare the significance of oaths in Carlyle's *Medieval Political Theory*, Vol. III, 39–40.

[51] *Epigraphia Indica*, VIII, 43.

was elected to kingship by "all the orders of the people." In the seventh century Harsavardhana came to the throne through election by ministers and magistrates; and the approval of the people was "shown in their songs."

On the latter occasion Premier Bhandi, "the distinguished," "whose power and reputation were high and of much weight," addressed the assembled ministers thus: "The destiny of the nation is to be fixed today. The old king's son is dead, the brother of the prince, however, is humane and affectionate . . . . . Because he is strongly attached to the family, the people will trust in him. I propose that he assume royal authority. Let each one give his opinion on the matter whatever he thinks."[52]

During the middle of the eighth century a commoner was elected king in the person of Gopala,[53] who eventually became the founder of the Bengali empire. The people wanted a strong monarch as the panacea for the evils of the "logic of the fish" (*matsya nyaya*) or the Hobbesian "state of nature," i.e. anarchy.

CONCILIAR ELEMENTS IN HINDU POLITY

Since the establishment of the Maurya empire in India (B.C. 321) and the Tsin empire in China (B.C. 221), the constitutional story of the two countries has been more or less the same. With the fall of the Greek republics (B.C. 338), and later, with the conversion of the Roman republic into an empire (B.C. 27), Europe also entered upon the career of despotism, mostly arbitrary and absolute, until it received a strong blow in the English revolution of 1688, and was shaken to its foundations by the French revolution of 1789. But during this period the organs of public opinion were not altogether extinct. In Asia as in Europe the voice of the people made itself heard, at least semi-constitutionally, in the affairs of states.

The Vedic *sabha* seems to have passed through four, not necessarily successive, stages. It may be said rather to have been the prototype of three new administrative bodies.

[52] Beal's *Si-yu-ki*, Vol. I, pp. 210–211.

[53] Rakhaldas Banerji's *Memoir on the Palas of Bengal*, p. 45 (published by the Asiatic Society of Bengal, Calcutta).

In the first place, as we have seen, it was a "direct democracy" of the patriarchal type, i.e., with its chief at the head as the "permanent executive" or king.

Secondly, it was probably such an assembly that constituted the council of the *vairajya* (kingless) polities. These two types must have flourished side by side for a long time.

Thirdly, with the expansion of the tribe and clan in population and area, the primitive *agora* of the whole folk must have gradually dwindled into the less numerous and hence less democratic council of ministers, i.e., the king's assistants or advisers in war and peace. The council of the *witan* in the early English constitution had the same origin and status.

In this third form the Hindu *sabha* was a permanent "estate," and served the purposes for which the *Champs de Mars* and the *Champs de Mai* were but occasionally convened by the French kings down to the thirteenth century. This institution was for a long time synchronous with the second and outlived it.

And fourthly, the Vedic *sabha* may be regarded as persisting all through the ages in the primary units of administration, the rural communes, the so-called "village communities." Anthropologically, no doubt, these village institutions, no matter whether the lands are owned in common or in severalty, have to be explained as altogether independent growths, as they are distributed[54] almost as widely as mankind in one form or another. Nevertheless, these folk-moots do not differ in kind from the Teutonic, Homeric, and Vedic *civitas*. Logically, therefore, if not chronologically, they may be treated as "survivals," so far as administrative (as distinguished from agrarian) history is concerned.

The patriarchal democracy disappeared from India long before the Maurya empire, and probably the last vestiges[55] of the sov-

[54] Asakawa's "Contributions of Feudal Japan to New Japan" in the *Journal of Race Development*, July, 1912; Ashley's *Surveys Historic and Economic*, pp. 92–106, 147–151, 152–156; Gomme's *Primitive Folk-moots*, 20–69, and *Village Community*, 233; Stubbs' *Constitutional History*, Vol. I, p. 34; Seebohm's *English Village Community*, 437–441; Maine's *Village Communities in the East and West* (ed. 1876), pp. 122–126.

[55] For traces of Hindu republics about seven centuries later than this date see Smith's *Early History of India* (ed. 1914), p. 286.

ereign republics were absorbed into it. But the council of ministers and the village community have since then represented the conciliar element in the Hindu constitution.

The ministry was indeed of substantial importance in the polities of India. Not only the semi-mythical "great exemplars," like Rama and Yudhisthira of India, but the historical Charlemagnes and Fredericks of oriental history also are known to have been greatly controlled by their ministers. Matters of public law could not be passed by the king alone.

The council of ministers is invariably mentioned as authority along with the king in the royal grants with which we are familiar in Ceylonese inscriptions.[56] Hiuen Thsang tells the story of a Hindu minister who succeeded in checking the ultra-philanthropic quixotism of his king. The minister argued thus: "Your Majesty indeed will get credit for charity, but your minister will lose the respect of all," because "your treasury will thus be emptied and then fresh imposts will have to be laid, until the resources of the land be also exhausted, then the voice of complaint will be heard and hostility be provoked."[57]

Similarly it is the initiative and sense of responsibility of the Persian ministers that lay behind the splendid work done under the Abbasside caliphs of Bagdad in cience, literature, material improvements, roads, canals, etc.

The rural communes of India are well known to students of political institutions as more or less self-sufficient units of local government through the writings of Sir Henry Maine, though his statements about the "communal" character of land-tenure in the Indian villages can no longer be accepted *in toto*, in the light of Baden Powell's detailed investigations.

Buddhist evidences furnish us with glimpses into village self-rule for the fifth and sixth centuries B. C. "The villagers united of their own accord to build mote halls and rest-houses and reservoirs, to mend roads between their own and adjacent villages,

[56] *Epigraphia Zeylanica*, Vol. I, no. 9; Vol. II, no. 5.
[57] Beal's *Si-yu-ki*, Vol. I, p. 107.

and even to lay out parks. And it is interesting to note that women are proud to bear a part in works of public utility."[58]

South Indian inscriptions of the tenth century indicate that sometimes the general assembly of the village was divided into several committees: (1) annual committee, (2) garden committee, (3) tank committee, (4) gold committee, (5) committee of justice, (6) committee for general supervision or some special tax. There was no prohibition against women being members.[59]

The mode of election to the committees was as follows: "The village with its twelve streets was divided into thirty wards (the number of members is thirty). Every one who lived in these wards wrote a name on a ticket. The tickets were first arranged in separate bundles representing the thirty wards. Each bundle bore the name to which it belonged. The bundles were then collected and put into a pot and placed before the general body of inhabitants both young and old in meeting assembled. All the priests were required to be present. The oldest priest among the present then took the pot, and looking upwards so as to be seen by all people, called one of the young boys standing close by who does not know what is inside to pick out one of the bundles. The tickets in this bundle were then removed to another pot. After it had been well shuffled, the boy took one ticket out of this bundle and handed it to an officer called the arbitrator, who received it in the palm of his hand with fingers open. He read out the name, and it was then shouted out by the priests."[60]

The rural communes have lived on till modern times enjoying greater or less autonomy according to the degree of centralization achieved by the rulers of successive ages. "The townships remain entire," says Elphinstone, "and are the indestructible atoms, from the aggregate of which the most extensive Indian empires are composed."[61] He quotes Metcalfe's report: "They

[58] Rhys Davids' *Buddhist India*, Ch. III.

[59] *Madras Epigraphy*, 1909–1910, p. 98, cited in Matthai's *Village Government in British India*, pp. 25–30.

[60] Matthai, *Ibid.*

[61] *History of India*, Vol. I, ch. II; Report of the Select Committee of the House of Commons, 1832, Vol. III, App. 84, p. 131.

seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution . . . . but the village communities remain the same."

GILDS AND CORPORATIONS

Among the republican institutions of the Orient must be mentioned the corporate bodies which the people have always organized for the furtherance of joint interests. Such bodies have taken the character of secret societies for revolutionary purposes, religious associations, as well as industrial companies, trade gilds and business corporations. The capacity of the Orientals for collective work is as conspicuous in these as that of the Occidentals in their religious fraternities, orders of knights, gilds of minnesingers and mystery-playwrights, craft organizations, etc.[62]

In China the trading gilds were energetic and numerous as early as the seventh century B.C.[63] Some of the existing gilds trace their origin to a remote antiquity as far back as B.C. 1122.[64] They have always been of "purely democratic origin, without grant or license from the governing powers."[65]

Collectivism in production has also been a regular feature of economic life in India. As early as the fifth and sixth centuries B.C. we hear of gilds or corporations of butchers, leather workers, fishermen, sailors, dyers, ivory workers, metallurgists, etc.[66] Even the evils of modern capitalism, of trusts and corners, seem to have been experienced by the people. In the *Artha-shastra* (fourth century B.C.) we read that the middlemen, the merchants, used to raise prices by concerted action among themselves, so that profits sometimes went as high as cent per cent.[67] And the socialistic legislators of the day were compelled to interfere

[62] Chambers' *Mediaeval Stage*, Vol. I, 55, Vol. II, 111–115, 258–262; Unwin's *Gilds and Companies of London*, 110–127, 267–293, etc.

[63] Werner's *Chinese Sociology*, Table II.

[64] Macgowan's article in the North China Branch of the *Journal of the Royal Asiatic Society*, 1886, New Series, Vol. XXI, pp. 133–192.

[65] Morse's *Gilds of China*, pp. 9, 12.

[66] Rhys Davids' *Buddhist India*, Ch. VI.

[67] Pramathanath Banerjea's *Public Administration in Ancient India*, p. 271.

in matters of exchange on behalf of the consumers.[68] Kautilya penalized "such large profits as are ruinous to the people."

Combinations for industrial and commercial purposes were important enough to have special mention in all treatises on law and polity in connection with the regulation of wages and profits. The ancient gilds[69] had their heyday probably between the third century B.C. and the sixth century A.D. but they have had a vigorous life ever since.[70] Shookra makes us familiar with some of the old state legislation relating to the gilds: "The leader or captain of those who combine to build a palace or a temple and construct canals or furniture is to get twice the share received by each of the others. The remuneration of a musical party is also to be divided according to this principle."[71] About joint stock enterprises we are told that "those who deal in gold, grains, and liquids collectively shall have earnings according to the amount of their share, greater, equal, or less."[72]

But the Hindu gilds were no mere monopolistic economic organizations against which the state had to protect the people. They were virtually little states in themselves. They had their own judges and judicial tribunals. We learn from Narada[73] and Brihaspati[74] that "companies or corporations . . . . . have the power to decide law-suits."[75] And their position on the judicial hierarchy is indicated in the *Shookra-neeti* as follows: "The corporations will try the cases not tried by the families, the assemblies will try the cases left by the corporations."[76]

The gilds were legislators too. The companies of traders are mentioned by Manu[77] as lawmaking bodies, and he declares some

[68] Shamasastry's "Chanakya's Land and Revenue Policy" in the *Indian Antiquary*, 1905, p. 56.

[69] Hopkins' *India Old and New*, pp. 169–176.

[70] Birdwood's *Industrial Arts of India*, pp. 138–140, etc., cited in Ananda Coomaraswamy's *Indian Craftsman*, pp. 8–12 (Note the references to the regulation of the hours of labor, unemployment, etc.).

[71] *Shookra-neeti*, Ch. IV, sec. v, lines 606–608.

[72] *Ibid.*, IV, v, 614–615.

[73] "Legal Procedure" (*The Sacred Books of the East*).

[74] *Ibid.*, Ch. I, verses 28–31.

[75] Jolly's *Minor Law Books*, Part I, pp. 346–350.

[76] Ch. IV, v, lines 59–60.

[77] Ch. I, verse 118.

of their usages in his *Institutes*. The customs of the gilds should be studied by the king, says Shookra,[78] with reference to the administration of justice. And on the gilds themselves their own practices were binding.[79] All these customs and usages were recognized by the state and thus constituted "positive" law.[80]

Further, the gilds were treated as representative bodies by the king. "It is through their gilds that the king summons the people on important occasions. The aldermen or presidents of such gilds are sometimes described as quite important persons."[81] And if there were disputes between gilds in their corporate character they fell within the jurisdiction of the royal courts. "The Lord High Treasurer acted as a sort of chief alderman over the aldermen of the gilds."

Constitutionally speaking, then, these semi-sovereign corporate bodies of the Orient have had much the same relation with the state as the "gild merchant" and craft gilds of medieval Europe with the borough-administrations of Ghent, Cologne and Florence, or with the feudal barons, or with the king himself. The political immunities and privileges of the European artisans were, generally speaking, no other than the autonomies "delegated" to the corporations by the oriental rulers.[82]

LAISSEZ FAIRE

The liberties, personal and communal, associated with feudalistic disintegration are the inevitable concomitants of all decentralization. These have been enjoyed by the Hindus during almost every period of their history.

Like the Byzantine, Carlovingian and Hapsburg empires of Europe, and like the Tang, Ming and other Chinese empires, the

[78] Ch. IV, v, lines 89–91.

[79] Ch. IV, v, line 35.

[80] The "corporation law" relating to the constitution of gilds and public associations is given by Brihaspati (Ch. XVII, verses, 5, 10, 13, 15, 16, 17, 19, 22, 24).

[81] Rhys Davids' *Buddhist India*, p. 97.

[82] Brissaud's *History of French Public Law*, p. 253; Gross' *Gild Merchant*, Vol. I, pp. 105, 159–162, etc. Compare Brihaspati in note 80 and Birdwood in note 70. *Vide* also Hopkins' *India Old and New*, pp. 193–196 (jurisdiction of the gilds).

Maurya, Gupta, and Moghul empires of India were, except for short intervals, mere apologies for empires, if we strictly apply to them the test of Austinian sovereignty. These *Weltherrschaften* were really the nurseries of home rule, provincial autonomy, and local self-government.

It should not be surmised, however, that strong centripetal forces were wanting in India. From Sanskrit and Pali sources we learn, as in Radhakumud Mookerji's *Fundamental Unity of India*,[83] that the conception of pan-Indian nationality and *federation de l'empire* was the permanent source of inspiration to all "aspirants" (*vijigeesoo*) to the position of the *chakravarti* or the *sarva-bhauma*, i.e., the *dominus omnium* of Bartolus. And more than one oriental Napoleon succeeded in giving a unified administration, financial as well as judicial, to extensive provinces in Hindustan.

Organization in India under the *sarva-bhauma* or *chakravarti* emperors was no less thorough than in China under the Manchus.[84] The census department of the Maurya empire, as described by Megasthenes and Kautilya, was a permanent institution. It numbered the whole population, says Narendranath Law,[85] as well as the entire live stock, both rural and urban. Causes of immigration and emigration were found out. "Managers of charitable institutions were required to send information to the census officers." "Merchants, artizans, physicians, etc. had also under the city rules to make reports to the officer in charge of the capital regarding people violating the laws of commerce, sanitation, etc."

The centralization manifest in the collection of vital statistics marked every department of governmental machinery. The central government bestowed attention upon the question of irrigation even in the most remote provinces. "Although Girnar

[83] Pp. 70–74, 106, 108–111, etc.

[84] *Cf.* Williams, *The Middle Kingdom*, Vol. I, pp. 395–500. Tocqueville's adverse criticism of the centralization under the *ancien régime* (Brissaud's *History of French Public Law*, p. 396) would apply with no less force to the centralization of rural communes under the Kautilyan imperialism ("Chanakya's Land and Revenue Policy," by Shamasastry in the *Indian Antiquary*, 1905, pp. 7, 8).

[85] *Studies in Ancient Hindu Polity*, Vol. I, pp. 106–114.

is situated close to the Arabian Sea, at a distance of at least 1000 miles from the Maurya capital (Pataliputra on the Ganges in Eastern India, the site of modern Patna), the needs of the local farmers did not escape the imperial notice."[86] It is an open question if imperialism was ever more effective in any period of European history.

Chandragupta and Asoka's highest court of judicature[87] might be the model of the *Parlement* of Paris, first organized in the thirteenth century by Louis IX. The judicial hierarchy of the traditional law books was also similar to that of the Chinese: "A case tried in the village assembly goes on appeal to the city court, and the one tried in the city court goes on appeal to the king."[88]

In Moghul India land revenue was assessed on a uniform basis of measurement. The France of Louis XIV, though about one-third of the contemporary Indian empire, did not possess this uniformity, in spite of the centralizing ambitions and exploits of the *grand monarque*. "On the eve of the French Revolution" there were about "three hundred and sixty distinct bodies of law, in force sometimes throughout a whole province, sometimes in a much smaller area."[89] The administrative homogeneity of Moghul India was to no small extent brought about by the construction of roads which were maintained at a high level of excellence both for commercial and military purposes. Tavernier, the French merchant, found traveling in India in the seventeenth century "more commodious than anything that had been invented for ease in France or Italy."

But communication, conveyance, transmission of messages, transfer of officers, etc., howsoever efficiently managed, could not by any means cope with the area and the population except for short periods under masterful organizers. The "absolute limit" of imperialism was offered by the extent of territory and similar natural hindrances. Even the best conceived organs of unifi-

[86] Smith's *Early History of India* (ed. 1914), 132.
[87] Law's *Hindu Polity*, Vol. I, pp. 117–121.
[88] Narada, I, 11, in Jolly's *Minor Law Books*.
[89] *Cambridge Modern History*, Vol. VIII, ch. II, p. 49.

cation could not under the circumstances permanently withstand the tendencies to centrifugal disruption. No political organism of a tolerably large size could therefore possibly endure either in the East or the West. It is not a special vice of the Orient, as has been alleged, that the empires were ephemeral and that the kingdoms were in a "state of nature." Rather, on the basis of comparative history, it has to be admitted that, if the territorial limits and the duration of effective imperialism be carefully remembered, the oriental administrators would not yield the palm either to the Romans, or to the Franks and the Hapsburgs who prolonged the continuity of the Augustan empire by "legal fiction."

A consolidated empire worthy the name, i.e., one in which influences radiate from a common center as the sun of the administrative system, could not be a normal phenomenon anywhere on earth before the era of steam and the industrial revolution. It is this fundamental influence of physics on politics, that, more than any other single cause, forced the ancient and medieval empires of the world to remain but bundles of states, loose conglomerations of almost independent nationalities, *statenbunden* cemented with the dilutest mixture of political blood.

"Regional independence" was thus the very life and core of that system in Asia as in Europe. It was the privilege into which the provincial governors, the *markgrafen*, the local chiefs, and the aldermen of rural communes were born. Their dependence on their immediate superior consisted chiefly in the payment of annual tribute and in occasional military service. They had to be practically "let alone" in their own "platoons." Even the strongest "universal monarchs" such as Shi Hwang-ti, Han Wu-ti, Tang Tai-tsung, Manchu Kanghi, Chandragupta, Samudragupta, and Akbar, could not but have recourse to a general policy of *laissez faire*, especially in view of the fact that each of them had to administer a territory greater in size than the Napoleonic empire at its height.

CONCLUSION

No Guizot has yet attempted a history of popular institutions in the Orient. We do not know, age by age, and country by country, precisely to what extent the peoples actually participated in the work of government. Archeological researches have not been extensive enough to supply the details of financial and administrative history. It is not possible, therefore, on the one hand, to appraise clearly the organizing capacity of the oriental statesmen and rulers and, on the other, to check accurately the democratic theories of the philosophers with reference to the economico-political *milieu*. Studies in comparative politics must remain incomplete for a long time to come for want of historical material from the Asian side bearing on the world's primitive and medieval institutions.

It is already clear, at any rate, that the nineteenth century generalization about the Orient as the land exclusively of despotism, and as the only home of despotism, must be abandoned by students of political science and sociology. It is high time, therefore, that comparative politics, so far as the parallel study of Asian and Eur-American institutions and theories is considered, should be rescued from the elementary and, in many instances, unfair notions prevalent since the days of Maine and Max Müller, first, by a more intensive study of the Orient, and secondly, by a more honest presentation of occidental laws and constitutions, from Lycurgus and Solon to Frederick the Great and the successors of Louis XIV, that is, by a reform in the comparative method itself.

THE COMMITTEE SYSTEM IN STATE LEGISLATURES[1]

C. LYSLE SMITH

Every state legislature in the United States is divided into a considerable number of standing committees. In spite of obvious advantages which seem to render it indispensable, the development of the committee system has been attended by great evils. Indeed, it is perhaps not too much to say that with the committee system the worst evils connected with legislative organization and procedure are intimately associated.

It is the chief purpose of this paper to point out the principal weaknesses or defects of the committee system in connection with state legislatures generally, and particularly the defects which have appeared in the practical operation of the system in the Illinois legislature; and at the same time to discuss certain proposals designed to remedy these defects.

These weaknesses and proposed remedies will be taken up in the following order:

I. Defects in the methods of making committee assignments.
II. Defects due to the number of standing committees.
III. Defects due to the size of committees.
IV. Defects due to the lack of a definite and fixed schedule of committee meetings.
V. Defects due to the lack of publicity and to the irresponsibility surrounding committee proceedings.
VI. Defects due to the insufficient control of each house over its committees.
VII. Defects peculiar to the committee on rules and the conference committee.

[1] This article was awarded the first prize of $250 in the Harris Political Science prize essay contest in 1917, open to undergraduates in the colleges and universities of Illinois, Indiana, Michigan, Iowa, Wisconsin and Minnesota. The writer was then a senior at Northwestern University, and is now in the United States Navy.

I

Standing committees in legislative bodies are either appointed by the presiding officer, which is the general rule especially in the lower house, or they are appointed by a committee on appointments.[2]

According to the ideal method of constituting committees, men are placed upon those committees with whose business they are especially familiar. This ideal, however, has had to give way in practice to two factors. Both in Congress and in state legislatures, committees have become actively partisan. In fact, the committees have been made the safeguards of party policies. It has been all but universally accepted in state legislatures, as well as in Congress, that the speaker's first thought in the construction of committees should be the interests of his party.[3] This partisan nature of committees is well illustrated in the committee appointments for the 1917 session of the Illinois senate. There were thirty-three Republicans in the majority party of that house, and thirty-three committees were created, apparently in order to give a chairmanship of a committee to each of these Republicans.[4]

The evil of such a practice arises when, as not infrequently happens, the machine of the dominant party is placed in absolute control of the greater part of legislation. A flagrant example of this occurred during a recent session of the Minnesota legislature when the speaker of the house appointed one of the state's most progressive leaders to the following committees: logs and lumber, manufacturing, public buildings, schools for defectives, and enrollment, to which the total number of bills referred was five; whereas twelve reactionary members, through their control of the conduct of the most important committees, handled 3648

[2] Among the states where committees are appointed by a committee on appointments are, Nebraska, Montana, Ohio (senate), Illinois (senate), West Virginia, Mississippi, Colorado, Rhode Island, Connecticut, Wisconsin, Virginia, Kansas (senate).

[3] See M. P. Follett, *The Speaker of the House of Representatives*, p. 155.

[4] *Senate Journal*, 50th Gen. Assem., 1917, pp. 2, 3.

bills in committee, or an average of more than three hundred bills each.[5]

Furthermore, where committees are appointed by the presiding officer, the election of that officer has had a tremendous bearing upon the naming of the committees. The successful officer must remember the men who supported his candidacy; he must recognize that each of the other candidates of his own party has a following which must not be offended; he must redeem the promises made during his candidacy for office; and he must not ignore the custom which demands that a man once appointed to a committee remain there until appointed to a more desirable post.[6] Aside from these influences that are brought to bear upon the speaker in making committee assignments, speakers are frequently guided in their choice by purely personal reasons. In Iowa, for example, it has been charged that committees on the suppression of intemperance have deliberately been made wet, and that committees on suffrage have been made "anti," according to the private opinions or party obligations of the appointing officer.[7]

Whether the naming of the committees by a committee on appointment is to be preferred to the method of appointment by the presiding officer is a disputed question. Apparently it is a question to be decided by each state according to local conditions. The method of appointment by a committee on committees has a great deal in its favor. Nebraska, for example, has derived the greatest satisfaction from this method, which, it is claimed, tends to secure the important places for the persons best fitted for those positions. Again, this method has done away with the suspicion of trading committee favors in order to secure votes for the position of presiding officer, which was so commonly charged in Nebraska under the former system of appointment by the presiding officer. Furthermore, by making this committee on committees rather large, so that it represents all parts of the state, a representation of all regions has resulted,

[5] Lynn Haines, *The Minnesota Legislature of 1911*, p. 29.
[6] In this connection see *Statute Law-Making in Iowa*, p. 558.
[7] *Statute Law-Making in Iowa*, p. 559.

and with it a far greater degree of satisfaction. There will probably always be disappointments in committee lists; but in Nebraska under the present system each person knows that his claims are considered by a committee which includes his friends as well as those who may be his opponents.[8]

The recent experience of Pennsylvania also seems indirectly to endorse the appointment of committees by a committee on committees. In the 1913 session of the legislature, and as a result of the reform wave in 1911 and 1912 which placed the progressives in control of the lower house of the legislature, committee appointments were made by a committee on committees. In 1915, however, with the machine elements again in control, the appointive power was restored to the hands of the speaker.

II

The large number of standing committees and the defects incidental thereto constitute a second important weakness of the committee system. Table I shows that too many committees are found in nearly every state legislature. Tables III and IV indicate the rapid manner in which both the number and size of committees have increased in the Illinois legislature, especially since 1870.

This overdevelopment of the committee system together with the excessive membership of committees is a fundamental cause of committee inefficiency. For example, a large number of committees results in conflicting dates for committee meetings, which makes full attendance impossible. These conflicts can only be removed by the establishment of a nonconflicting schedule of committee meetings, but such a reform is out of the question until a reduction in the number of committees is obtained.

Furthermore, a large number of committees requires the individual member to serve on too many. Thus, in the Illinois legislature in 1911, the house of representatives with sixty-six committees required each member to serve on an average on twelve

[8] From a letter received from A. E. Sheldon, Director of Nebraska Legislative Reference Bureau.

committees. In 1915 this situation was greatly improved by reducing the number of committees to thirty-three—a change which reduced the total number of committee appointments to seven hundred and one, and thus required the average member to serve on five committees instead of twelve.[9] The senate in the same year reduced its committees from forty-one to twenty-six.[10] In both houses this reduction was followed by great improvement in the handling of proposed legislation. Experienced members testify that they have never seen so much careful consideration given to bills in committee as at that session. There were also fewer committee meetings held without a quorum.[11] In 1917 another house committee was omitted, leaving a total of thirty-two.[12]

Even the last number is too large, for experience has proved that when a member tries to participate in the work of as many as five committees, the field is too broad for any careful and detailed survey of the bills relating to many distinct subjects. "All unnecessary committees only contribute more plunder on the one hand and extra safeguards for the boss on the other."[13] Under present conditions the man who is chairman or interested in the work of one committee can scarcely find or take time to consider other measures. This fact has been recognized in Massachusetts, where a member is not permitted to serve on more than two committees or to be chairman of more than one.[14] A further reduction in the number of committees is also needed in order to permit the proper scheduling of committee meetings, and to concentrate and thus make more efficient the committee work of the individual legislator.

Moreover, too many committees mean a lack of centralization of committee work upon related fields, and this results in a lack

[9] House Rules, 49th Gen. Assem. of Ill., Sec. on Committees.

[10] Senate Rules, 49th Gen. Assem. of Ill., Sec. on Committees.

[11] Illinois Legislative Voters League *Assembly Bulletin*, July 20, 1916, p. 9.

[12] *House Journal*, 50th Gen. Assem., Tuesday, Jan. 10, 1917, p. 3.

[13] Lynn Haines, *Searchlight on Congress*, Oct. 16, 1916, p. 3.

[14] House Rule 23, p. 81, "List of Members," 1916, compiled for General Court of Massachusetts, by Henry D. Coolidge, Clerk of Senate, and James W. Kimball, Clerk of House.

of efficiency as well as a lack of responsibility. To continue with the example of the Illinois house, there were the following striking examples of diffusion of committee work upon related subjects in the 1917 session. Instead of one committee upon public works, there were two committees, one on roads and bridges and one on waterways. There was a committee on the judiciary and also one on judicial department and practice. Two committees were appointed upon the subject of finance, the appropriation committee and the revenue committee. There was a committee on education, and one to visit educational institutions; a committee on charities and corrections, one to visit penal institutions and one to visit charitable institutions. In the senate there was a committee on agriculture and another on live stock and dairying; a committee on insurance and one on farmers' mutual insurance; also a committee on public utilities and one on railroads.

As a remedy for defects due to number and size of committees, the following reorganization is proposed: that both houses adopt a system of fifteen joint standing committees, five of them to be important and ten of them to be minor committees; and that legislators be limited to membership on not more than one of the important committees and not more than two of the minor committees.

The five important committees should include those on (1) agriculture, (2) finance, (3) judiciary, (4) industrial affairs and manufacturing, (5) public utilities and municipalities.

The ten minor committees should include committees on (1) miscellaneous matters, (2) public efficiency and civil service reform, (3) elections, (4) enrolled and engrossed bills, (5) education, (6) rules, (7) rights of minority, (8) public welfare, hygiene and sanitation, (9) public works, (10) banking and insurance.

The adoption of some such plan of reorganization will eliminate the evils discussed above. It will make possible the formation of a definite nonconflicting schedule of committee meetings; it will limit and thus make more efficient the work of the individual legislator; it will centralize the work of the committees, and thus make more impracticable, if not impossible, the packing of important committees and the sidetracking of the independent members by the speaker.

Furthermore, the proposed plan will make possible the adoption of a system of joint committee hearings, thus doing away with the present lack of coördination and coöperation between the committees of the two houses.

The chief advantages claimed for the joint committee system may be briefly summarized as follows: a large amount of time is saved because a single committee hearing is substituted for separate hearings in each house; the tendency toward a mutual shifting of responsibility between the houses is lessened; a strong educative influence upon the newer members results from association with the older members of both houses; there is a marked increase of efficiency, due to the intimate contact of men of both houses and of varied experience; there is made possible a closer scrutiny and a more intensive study and investigation of legislative problems; finally, and perhaps most important, the influence of the committee members from the upper house acts as a check upon the dominance of the speaker upon the committees of the lower house.[15]

The chief argument against the use of the joint system of standing committees is that it neutralizes the effect of the bicameral legislative system. This, however, need not follow, for the final action of the two branches could continue to be independent even though the hearings were held jointly.[16]

III

Closely related to the defects traceable to the number of committees is the third class of defects, namely, those connected with the size of committees. It is noticeable that in two of the states most noted for machine-controlled legislation—Illinois and Pennsylvania—the largest committees exist. The committees of the

[15] See P. S. Reinsch, *American Legislatures and Legislative Methods*, pp. 173–74.

[16] The joint rules of the Vermont legislature require, for example, that "Committees of like functions of the House and Senate, may for the purpose of facilitating business, meet together as a joint committee for the purpose of public hearings. They may consider in joint conference all measures but shall take action separately, and shall report only to the respective houses." Joint rules of the Senate and House of Representatives, Vermont, 1917, Rule 5.

Pennsylvania house vary from twenty-five to forty members.[17] The one guiding factor in the appointment of committees in the past seems to have been that of patronage, for, as is becoming more and more notorious, committee positions constitute a cheap kind of patronage that helps the political managers to pay their debts.

"The true work of a committee can of course best be done by a small group of men who may gather around a table, and engage in an informal discussion of the business in hand. To make of it another assembly, even though it be considerably smaller than the house itself, is usually to defeat the possibility of efficient action."[18] The experience of state legislatures as well as Congress has proved that since a large body can only form an opinion upon a particular matter through the intensive study of a smaller body, it has become customary as well as necessary for the house to pass almost any bill that is recommended by a committee.[19] It follows that when this smaller body takes on the form of large committees (the Illinois appropriation committee for example, which in 1917 was made up of forty-three members, or the Illinois judiciary committee which was made up at the 1917 session of forty-five members), legislation of such a body is really determined by subcommittees.[20] This serves as a ready means for the shifting of responsibility by the members.

Objection is not here made to the appointment of subcommittees. In fact, the reorganization herein proposed provides for the appointment of subcommittees. For example, it has been proposed that the present Illinois committee on roads and bridges and the one on waterways be combined for the purpose of the centralization of work and responsibility into one committee on public works. It is a necessary part of such a plan that there be a division of work among permanent and responsible subcommittees. The objection that is raised is that

[17] House Rules, Pennsylvania, 1915, Sec. on Committees. *Smull's Legislative Handbook*, 1915, p. 1176.

[18] P. S. Reinsch, *American Legislatures and Legislative Methods*, p. 164.

[19] Alexander Fleischer, "Pennsylvania's Appropriations to Privately Managed Charitable Institutions," in *Political Science Quarterly*, XXX, p. 28 (1915).

[20] P. S. Reinsch, *American Legislatures and Legislative Methods*, p. 165.

the original purpose for which the committee system was established is defeated when the committee is made so unwieldy that it cannot efficiently check the work of its subcommittees. Even though there should prove to be no attempt on the part of legislators to shift the responsibility for legislation upon subcommittees, it is improbable that all of the forty-five members of the Illinois judiciary committee could have carefully considered all of the bills that were referred to them. The large committee means, therefore, the probability of rule by the inner few. The proposed reduction in the number of committees to fifteen, and the accompanying requirement that each member be limited to membership upon but one of the five important committees and not more than two of the ten minor ones, will abolish the large committee. Doing away with the large committee will make for greater responsibility, because the uncontrolled subcommittee with its underhanded methods and the probability of control by a minority will also disappear.

IV

The absence in most states of a definite and fixed schedule of committee meetings and hearings may be set down as another and serious defect of the committee system. Such a schedule should be made at the opening of each session under the direction of some responsible head, preferably the speaker, as is the case in California.[21] Under such a system each committee would be assigned definite days and hours of meeting. In fitting the members to this schedule without conflicts the committees could be divided into groups. No legislator should be allowed membership upon a committee of any two classes that would conflict in their hours of meeting. Under such a plan no member could excuse his absence from a committee meeting on the ground that he was attending some other meeting. We shall never impose upon our legislative committees full responsibility until each committee meeting is called as a part of such a nonconflicting sched-

[21] California *Assembly Daily Journal*, Friday, Jan. 12, 1917. Announcement by speaker suggesting tentative schedule of committee meetings, p. 17.

ule. In states where committees do not meet according to such a schedule, it is not unusual to have two or three important committee meetings called at the same time. In many instances committees meet and then adjourn for want of a quorum. In this way many days' time is lost. Again, bills are frequently passed out of committees on a bare quorum of the committee members. Furthermore, in all state legislatures where committees are not required to hold scheduled meetings, bills have not infrequently been reported out without holding a meeting at all.[22] Finally, the frequent occurrence of conflicts has made it a common practice in some states, notably New York, for members to vote by proxy.[23] Under such a practice great temptation as well as undue power is placed in the hands of the chairman who usually votes the proxies.

California began to experiment with a schedule for committee meetings in 1913, and with such good results that for the 1917 session the committees of both houses of the legislature of the state met according to a schedule that not only removed all conflicts in both houses, but also enabled a member in one house with a bill before the other, and other persons interested in bills before either house, to know the exact time and place at which a hearing might be had before the committee in charge.[24] The Nebraska senate in 1917 expressed its approval of this plan by requiring that a "schedule of committee meetings shall be printed and so arranged as to secure full attendance at committee meetings without conflicts."[25] A form of such a schedule, adapted to the proposed reduction to fifteen committees, is suggested in Table II.[26]

With these examples before us it is evident that the schedule for committee meetings is no longer an experiment. The advantages of such a schedule are obvious.

[22] Legislative Voters League of Illinois, Compilations (unpublished).

[23] *Legislative News*, Jan. 11, 1915, Bulletin 14, p. 4. (Published by Voters Legislative Association, Albany, N. Y.)

[24] California *Legislative Assembly Journal*, Friday, Jan. 12, 1917, pp. 17–18.

[25] Nebraska *Legislative Manual*, 1917, p. 40, Senate Rule XXIII (2).

[26] See p. 631.

V

The fifth class of evils to be considered are those that are due to the lack of publicity and to the irresponsibility surrounding committee meetings. Experience in state legislatures, as well as in Congress, has proved that where there is secrecy in legislative procedure we cannot have efficiency and responsibility in legislation. The great lack of responsibility that has accompanied statute lawmaking in the United States indicates that neither the state legislatures in general nor Congress have ever given attention to the publicity that should surround committee procedure. In fact, there is a general and, perhaps, well-founded impression that, with the possible exception of the Massachusetts legislature, the potential influence of public meetings and hearings in bringing to bear upon legislative action the opinions and desires of the people has never been realized in our state legislatures.

Some of the more progressive state legislatures are beginning to invite publicity in their committee meetings. Some states definitely require that all committee meetings be made public.[27] This should be made a part of the rules of all state legislatures. Even where public meetings are required by rule, some further provision should be made for announcing these meetings, for it is of little avail to require that all meetings be made public if no further efforts are made to inform the public of the meetings and of the subjects that are to be considered.

The rules of the Nebraska senate of 1917 require that "the chairman of each committee shall give notice in writing to the secretary of the senate at least twenty-four hours in advance of the place and hour of meeting and the bills that are to be considered, to the end that all persons interested may appear and request a hearing."[28] The New York assembly has a similar rule, whereby a notice of committee meetings goes from the clerk of the committee to the clerk of the assembly, upon whom is im-

[27] Among these states are Massachusetts, New York, New Jersey, Nebraska, Illinois (house), Ohio, Vermont, and Wisconsin.

[28] Nebraska *Senate Manual*, 1917, p. 39, Senate Rule XXIII (1).

posed the duty of seeing that this notice is recorded in a book open to the public at "all reasonable hours."[29] These requirements are great improvements upon the methods of announcing committee meetings upon insufficient notice that formerly existed in Nebraska and New York, and that exist in other states today.

In conjunction with a schedule for committee meetings more pronounced results would obtain if committees were required to keep public calendars. Many important bills which are to come before a legislature are ready and waiting to be made a part of such a calendar at the opening of the session when bills are assigned to committees, and when committees should receive their schedule of meetings. It is, therefore, not unreasonable that committees should be required to make out early in the session a calendar of the hearings to be held upon these bills. In addition to this original calendar, a supplementary weekly calendar should be made out as the session progresses in order to assign hearings for all bills subsequently introduced. Such a rule is found in the Wisconsin assembly, where it is provided that the "chairman of each standing committee shall on or before Thursday of each week file with the clerk his daily calendars for the following week. Such a calendar shall be printed in full in the weekly bulletin of hearings."[30] Wisconsin has not adopted a schedule of committee meetings; but this rule of the assembly is a step in the right direction. When the advertised public committee meeting becomes established in all states it will do much toward the promotion of responsible legislation.

As a further remedy for the present lack of publicity and for the irresponsibility surrounding committee meetings, committees should be required to keep permanent records of all proceedings in committees including the place and time of meeting, the attendance and the vote of each member present upon all measures considered. "Many a man's record on roll call has affected his reëlection, yet the committee work is fully as vital a part of leg-

[29] The *Clerk's Manual* of the State of New York, 1916. Rule of the Assembly, no. 19, p. 84.

[30] Wisconsin *Assembly Manual*, 1913, par. 35, rule 28, p. 55.

islative activity as any, and it would seem that it would be as interesting to a man's constituency to know whether he was faithful in his duty in this respect as well as in others."[31] No reform will work more for individual responsibility than this one requiring the keeping and preservation of committee records. The primary object of such a rule is to make each member take a stand before the public upon every bill that is submitted to him for consideration. He will then be as careful of his action in the committee room and the committee of the whole as in the regular session.

In 1913 the Illinois house adopted the following rule: "The chairman or acting chairman of each committee shall keep or cause to be kept a record in which there shall be entered:

(1) The time and place of each hearing and of each meeting of such committee;

(2) The attendance of each committee member at each meeting;

(3) The name of each person and address, appearing before the committee, with the name of the person, persons, firm, or corporation and address, in whose behalf such appearance is made;

(4) The vote of each member upon all motions, bills, resolutions and amendments, acted upon. Such a record shall be read and approved before the expiration of ten days after each meeting, or at the next regular session of the committee."[32]

This rule should be adopted by the Illinois senate, as well as by other state legislatures, but with the following amendment: that the chairman of each committee be made responsible not only for making such a record, but also for filing it in the office of the secretary of state where it shall be permanently preserved. In 1913 this rule was observed so far as the making of such records was concerned. But, due to a failure to fix the responsibility for preserving these records, they were later thrown away by an office clerk with somewhat doubtful carelessness.[33] In 1915 this rule was carried out in a similarly lax manner.

[31] Massachusetts Reform Committee, 1915.

[32] Illinois House Rules, 1917, Sec. on Committees.

[33] Legislative Voters League of Illinois, Compilations (unpublished).

One of the chief obstacles to keeping permanent committee records is the inefficiency of committee clerks. The spoils system has so pervaded the appointment of committee clerks that in some cases the most ordinary stenographical duties could not be performed by them. Again, it has not infrequently happened that a clerk assigned to a committee has never been seen by the chairman of that committee during the entire session. During the 1915 session of the Illinois legislature Senator Cromwell, chairman of the committee on insurance, attempted to call a meeting of his committee but was unable to find his clerk, who had been registered as one George Austin. The senator made unsuccessful inquiries for this clerk during the entire session; and then, it having occurred to him that Austin would have to sign his pay warrant, he put in a request at the recorder's office that Austin come to see him. A second request was later made at the same office and likewise several other requests, but without avail. Yet, the records now show that one "George Austin" drew $261 for service rendered as a committee clerk.[34]

Similar practices exist in other states. For example, Governor Clarke in his message to the thirty-sixth general assembly of Iowa severely condemned the practice of hiring extra legislative help as "pure unadulterated graft." He referred to the employment of committee clerks in these words: "Every man of legislative experience knows that many more committee clerks and other clerks are employed than are necessary. Every senator and representative knows of clerks sitting around these chambers in luxuriant ease from one end of the session to the other. Every senator and every representative knows that such a practice should fall under his condemnation."[35]

All committee clerks should be appointed under civil service rules. In spite of the obvious advantage of such a plan, Wisconsin is the only state legislature which requires the committee clerks to be appointed in this way.[36] Iowa requires that all

[34] Fayette S. Munro, *Legislative Spendthrifts*, pp. 22–23.

[35] *Statute Law-Making in Iowa*, pp. 588–589.

[36] Wisconsin *Senate Manual*, 1913, p. 78. Wisconsin allows to no employee compensation for any time except that for which he is actually in attendance, except when absent with leave in writing from his superior officer.

committee clerks be stenographers, but they are not appointed under civil service rules. In Illinois a bill to require committee clerks to be stenographers was allowed to fail. An investigation and reorganization of the entire committee clerk system should be undertaken with a view to eliminating the abuse of committee patronage by abolishing all unnecessary clerkships and by permitting salaries to be paid only for services rendered.

VI

A sixth class of evils comprises those due to insufficient control of each house over its committees. In every state there has developed the practice of "pigeon-holing" bills by committees. In Illinois in 1911 more than one-third of the bills referred to committees were not heard of again, and a vigorous fight was carried on against this smothering of bills in committee. The result was the adoption in the house of a recall rule which gives the privilege to a majority of the house to recall a bill from a committee.[37] Several states have rules similar to this.[38] In attempting, however, to discharge a committee under a recall rule, the merits of the bill frequently become involved with extraneous considerations, such as "The committee and its chairman must be sustained."[39]

Certain state legislatures where machine methods prevail, notably Pennsylvania, have a "graveyard" committee. Such a committee is composed of carefully chosen members who can be relied upon effectually to bury any undesirable measure referred to them. A committee of this type always bears a perfectly

[37] Illinois Legislative Voters League, Compilations (unpublished); Illinois House Rules, 1911–12.

[38] These states are Alabama, Colorado, Idaho, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, Ohio, Pennsylvania and Tennessee. North Carolina requires that all bills reported unfavorably shall lie upon the table, but may be taken from the table and placed upon the calendar at the request of any senator.

[39] *Legislative News*, Jan. 10, 1917, Bulletin 26, p. 1. (Published by the Voters Legislative Association, Albany, N. Y.)

innocent name. In the Pennsylvania senate, for example, it is the "Judiciary Special" committee, known in popular parlance as the "Pickling Vat." This committee, the most active and at the same time the most reliable when pigeon-holing and death are demanded by the political powers, never meets. It is controlled by one man, the chairman, acting with the politicians directing the senate chamber. No complaint is ever heard from the other members of the committee, for they are all chosen from among the "regulars" of the machine. In the 1913 session of the Pennsylvania legislature 137 bills that had passed the house were smothered in the "graveyard" committee of the senate.[40]

The true functions of a committee are purely advisory, and therefore no committee ought to have the power to say what bills the house may or may not consider. Unworthy bills should be killed, but they should be killed by the house itself. Committees should be required to report all bills to the house within a limited time from the date of reference. It should also be provided that any bill remaining in committee beyond the allotted time, unless an extension has been granted by the house, shall automatically take its place upon the general files of the house for consideration.

The question of how much time should be granted to a committee for the consideration of a bill is a problem to be worked out by the individual state according to its peculiar needs and conditions. In all states where such a limitation is not in force today the end of each session sees a great congestion in which an often corrupt sifting committee reigns supreme and in which bills are passed without adequate consideration. This congestion is due mainly to the following causes: the lax and inefficient way that bills are disposed of in committees; the corrupt practices of special interests in purposely holding up bills in committees until the late days of the session, when under the cover of great confusion and irresponsibility their unworthy bills may

[40] Philadelphia *Public Ledger*, Jan. 11, 1915.

stand a better chance of passing; finally, by the actual pocketing of bills by committee chairmen until the late days of the session.

As a favorite expedient for handling this rush of business the practice has become common in many states of creating a sifting committee.[41] Theoretically it is the duty of this committee to consider all bills that are reported by committees and select the more important measures for action by the house. But this committee is usually controlled by the presiding officers of the two houses, for its members are chosen by them and usually selected as men who will carry out the wishes of the leaders. In actual practice it acts merely to favor those bills that are either demanded by the house or that receive the approving nod of the speaker. Thus it was charged that in the Iowa legislature in 1909 the speaker and his sifting committee in the house enabled a wet minority in that body to block all action on the part of a dry majority of the whole legislature. The work of the sifting committee is not only that of killing bills, for in some states, among which is Iowa, the journals of the houses of the general assembly show that the sifting committees have actually initiated bills.[42]

The proposed limitation upon the time allowed for bills to remain in committee will have at least four advantages: (1) It will put an end to the closing period of congestion and the ensuing irresponsibility upon the floor of the house, because the excess number of bills that at present create the congestion at the close of a session will be reported out of committee earlier and may thus be disposed of by the house before the end of the session is at hand; (2) it will require committees to adopt a businesslike

[41] Sifting or steering committees are appointed by the presiding officers in the following states to take charge of pending bills: Idaho, Iowa, Kansas, Missouri, Nebraska, Minnesota, New Mexico (house), North Carolina, North Dakota, Montana, Ohio, Oklahoma, South Dakota, Utah, Wyoming and probably in other states. In Alabama, Illinois, Oregon and Washington the rules committee acts as a sifting committee. Such a committee is chosen by caucus in Indiana. The committee on committees on the senate of New Mexico appoints a sifting committee.

[42] *Statute Law-Making in Iowa*, pp. 546, 558.

procedure that will bring about a more efficient handling of bills in committee; (3) it will force the unworthy bill to run the same gauntlet of publicity that is required of other bills; and (4) it will tend to do away with the necessity of a sifting committee and its arbitrary control.

The chief objections to the requirement that committees shall report back all bills to the house are that such a rule will clog the calendars; will lead to prolonged discussions and tend to lengthen the session; and will increase the need for and the influence of a sifting committee to advance the important measures which may not be reported until late in the session. At the present time, however, in all states a large majority of all bills referred to committees are reported, while the rules in twenty-eight states either require that committees report back on all bills or else require a report upon the vote of a majority of the house.[43]

VII

We may now consider the evils which are peculiar to the rules and the conference committees. The work of these committees has played such a great part in our statute lawmaking that they are worthy of special attention.

In Illinois, until the twenty-seventh general assembly (1871), it had been the practice for the speaker to appoint a select committee on rules. It was the duty of this committee to examine the rules of the preceding session, recommend such amendments as were deemed necessary and submit their report back to the house. Upon the adoption of this report the committee went out of existence. In 1871, however, a new rule appeared which provided for a standing committee on rules, to consist of the speaker of the house acting as chairman, and six other members. With a

[43] The following fifteen states require committees to report back all bills within a stated time which varies with each state: Arkansas, California, Connecticut, Florida, Kansas, Massachusetts, Minnesota, Nebraska, New York (assembly), Nevada, Oklahoma, Oregon, Vermont, Wisconsin, Wyoming. For the remaining thirteen states that require a report upon the vote of a majority, see footnote 38.

slight variation in membership this committee has remained and is today made up of the "speaker and ten members."[44]

Much the same development has marked the history of this committee in the state legislature as in Congress. Immediately upon being established as a standing committee, new rules followed which tended to give it the place of highest privilege. Perhaps the session of 1911 marks the climax of the development of the rules committee in Illinois. In that year the following rule appeared:

"No rule shall be dispensed with unless by the concurrence of two-thirds of the members present, nor shall any rule be rescinded or changed without one day's notice being given of the motion thereof; but a new rule, not in conflict with existing rules, may be added, after such notice, by a two-thirds vote by the members, except when such new rule is reported by the committee on rules, and in that case such new rule may be adopted by a majority vote."[45]

[44] *House Journal*, 27th Gen. Assem., 1871, Sec. on Rules; Tuesday, Jan. 16, 1917, p. 3. For the variation of the membership of this committee, see committee No. 59, Table III. Reference to committee No. 71 on Table IV will show that the standing committee on rules did not originate in the Senate until the 34th Gen. Assem. in 1885.

It is interesting to note the relation in the development of the Illinois rules committee to that of the United States house of representatives. Up to 1860 the rules in Congress were enlarged mainly by amendments presented by individual representatives and required to lie upon the table for one day. Select committees were resorted to from time to time, but were usually confronted with the difficulty of getting the house to consider their report. A standing committee on rules was created in 1849 but lasted for only two Congresses. In 1858, a motion was made and adopted which created a select committee on rules to consist of four members together with the speaker. The presiding officer had never before served as a committee member nor has he on any occasion since belonged to any other committee. In the rules of 1880, the select committee of five was changed into a standing committee. Once organized as a standing committee, rulings followed which tended to give it a place of high privilege. Although in 1871 the congressonal committee on rules was still operating as a select committee, it is quite possible that the increasing importance of this committee in that decade may have influenced the leaders of the Illinois house that year when they formed their first standing committee, to be composed of the speaker as chairman and six other members.

[45] House Rules, 47th Gen. Assem., 1911, Rule 59.

At first sight this rule may appear to insure majority control; but in actual practice the house was entirely in the control of a minority that stood behind the speaker. In the first place the rules were brought in and adopted early in the session when only the rules committee understood what the house was really voting upon. After the rules had been adopted, however, the lawmakers soon found themselves hopelessly under the control of the rules committee, with only such privileges as the rules thus adopted chanced to grant.

In preventing changes in the rules, the power of the rules committee was almost absolute, for all proposed changes were referred immediately to it for approval and any unpopular proposals were smothered at the outset. It is true that in this year (1911) a recall rule was established in the house which enabled a majority to discharge any committee from consideration of a bill; but whenever under such procedure a proposed change in the rules did come before the house for consideration, then the two-thirds vote of the members present was required to pass the measure over the heads of the rules committee. Inasmuch as the speaker was in almost absolute control of a third of the house, the inevitable death of the measure had been merely delayed and not prevented.

Again, if the rules committee desired to pigeon-hole a bill upon the calendar, it needed only to engage the house with other special orders. If a proposition to which it was hostile appeared upon the floor of the house, the rules committee could bring in a rule to substitute some other measure for consideration. These motions were, of course, subject to adoption by a majority of the house, but again, the influence of the speaker practically insured their adoption.

On the other hand, observe the positive powers of the rules committee. The pettiest claim by way of a private bill might find, through its favor, precedence over the greatest appropriation bill. Furthermore, as is the case in Congress, it was possible for this committee to prepare a bill in the speaker's room and say to the committee to which it would naturally be referred: "Take this or nothing." Again, the membership of the rules

committee was kept small, while the size of the active house committees became large and unwieldy so that they were more easily brought under the control of the speaker through the use of methods that have been discussed.

In view of these facts, it was not without justification that steps were taken to curb the powers of the rules committee. In 1913 the Illinois house committee was deprived of its power of preventing changes in the rules, so that any member supported by a majority of the house may revise, amend, or substitute the rules even after adoption. The senate still operates under the two-thirds rule.

All of the evils of the rules committee in the house, however, have not yet been removed. For, in the closing days of a session with the congestion that has been described above, the rules committee in a number of states[46] takes on the veto powers of a sifting committee to pick out and favor certain bills at will. Reforms have been discussed in this paper which require and provide for the consideration of all bills. Their adoption will deprive the rules committee of most of its remaining power for evil. After the adoption of this reform the one remaining function of this committee would be that of introducing special orders for important bills demanding immediate consideration.

Under such reforms it is recommended that the rules committee take on the character of a joint central directive committee, the need for which has been given consideration. Most of the faults of the committee system could be relieved by such an institution. Its functions would be largely those of harmonizing the work of the two houses, and thus would tend to prevent conflicting and contradictory legislation without altering greatly the present methods and procedure.

Finally, we may consider the evils that attend the working of the conference committee. This committee is called into use whenever the two houses of the legislature disagree as to the final form in which a bill is to pass. In usual practice, either house makes a request for a conference upon a particular bill, whereupon three members are appointed by the presiding officer

[46] These states are: Illinois, Alabama, Oregon and Washington.

of each house to meet in conference as a joint committee. According to Professor P. S. Reinsch, the conference committee does not present a very difficult problem, for the great weakness of our legislatures lies rather "in their careless habit of undiscriminating assent to the larger part of the measures presented to them, than in any tendency to obstinate disagreement between rival chambers."[47] Yet, recent experience shows that a lack of regulation of this committee in some states has given rise to another serious evil of the committee system. In fact, it has not infrequently happened that where a conference committee has taken charge of a bill it has entirely nullified all rules for responsible legislation.

Examination of the procedure in the Minnesota legislature has disclosed that a conference committee, not infrequently "packed" according to the sole desire of the speaker, is called into use upon many of the most important measures.[48] Without regard to the limits of their authorized control over a bill, these committees assume absolute power of revision over the entire bill. In Illinois also this arbitrary practice has been especially noticeable in connection with the "Omnibus" bill, the most complex of the appropriation measures, which provides for the support of the state departments and the various state institutions. Within the conference committee many new paragraphs have been inserted into this bill relating to subjects wholly irrelevant to the points at issue between the two houses.[49] This practice has existed in other states, for the average legislature allows this committee a free hand. Bills are not infrequently held in conference committees until the late days of the session when, amid the congestion already referred to, the two houses must either accept the reports of these committees including all revisions and insertions or be held responsible for the defeat of the bills.

[47] P. S. Reinsch, *American Legislatures and Legislative Methods*, p. 179. But in the Illinois 49th general assembly eleven of the most important bills went to conference committees. Illinois *House Journal*, 49th Gen. Assem., 1915, Synopsis of Legislation.

[48] Lynn Haines, *Minnesota Legislature of 1911*, p. 54.

[49] Legislative Voters League, Compilations (unpublished).

As a remedy for these evils the conference committees should be limited in the time in which they are allowed to withhold a bill from the house. They should be permitted to deal only with those points upon which there is a disagreement between the two houses.[50] They should be required to submit reports of the committee proceedings, and all amendments proposed should be printed before action by the legislature.

The foregoing are believed to be the chief evils which have arisen in the development of the committee system in our state legislatures. The remedies here advocated propose important and essential reconstruction of the entire committee system. It will be noted that each reform is so interwoven with and dependent upon others that nothing short of a general reorganization will satisfy the needs of present legislative procedure for greater efficiency and responsibility.

[50] The Pennsylvania house requires that a conference committee shall not have power over any part of a bill except as to which a disagreement has existed between the two houses. Rules of the Penn. House, 1917, Rule 5. *Smull's Legislative Handbook*, p. 1173. The Wisconsin senate in 1913 expresses its approval of this reform by proposing a joint rule to the effect that the managers of the conference shall confine their report to the differences of the two houses that shall be referred to them. The Wisconsin assembly, however, failed to adopt the recommendation and the regulation of the conference committee in that state remains in the former lax condition.

TABLE I

Legislative committees

STATE	SENATE			HOUSE		
	Number of committees	Maximum membership	Minimum membership	Number of committees	Maximum membership	Minimum membership
Alabama	27	11	3	30	22	5
Arizona	22	7	4	27	7	4
Arkansas	36	9	5	43	19	7
California	33	17	3	48	21	5
Colorado	29	15	5	40	13	5
Connecticut*						
Delaware	19	5	3	30	7	3
Florida	34	11	5	47	9	7
Georgia	39	30	5	45	34	4
Idaho	23	7	3	38	7	3
Illinois	33	40	3	32	45	5
Indiana	45	13	3	51	13	5
Iowa	42	23	6	61	41	6
Kansas	42	13	5	55	23	7
Kentucky	35	9		65	14	
Louisiana	25	25	4	36	24	4
Maine†						
Maryland	30	9	4	33	13	4
Massachusetts‡	5	5	3	7	11	3
Michigan	62	5	3	63	16	5
Minnesota	27	28	7	57	36	5
Mississippi						
Missouri	32	13	5	47	16	8
Montana	35	9	3	45	15	4
Nebraska	27	9	3	29	11	3
Nevada	24			28		
New Hampshire	29	5	4	36	15	3
New Jersey	26	4	3	30	5	3
New Mexico	22	9	3	29	30	3
New York	25	13	5	31	15	6
North Carolina	46	10 to 25		41	10 to 25	
North Dakota§	46			46		
Ohio	38	13	5	42	17	9
Oklahoma	39	14	4	47	23	5
Oregon	33	7	3	60	7	3

* Most legislative committees are joint committees. There are 35 such having, as a rule, 11 members. A few have 4 members each.

† Most of the committees are joint.

‡ There are 29 joint committees in Massachusetts.

§ Varies with different sessions.

TABLE I—*Continued*

STATE	SENATE			HOUSE		
	Number of committees	Maximum membership	Minimum membership	Number of committees	Maximum membership	Minimum membership
Pennsylvania	33	21	5	41	40	25
Rhode Island	13	7	5	14	9	7
South Carolina	31	12	6			
South Dakota	31	15	3	48	15	3
Tennessee	31	20	4	30	20	4
Texas	31	15	3	47	25	5
Utah	23	7	3	43	9	3
Vermont*	29	7	3	30	15	3
Virginia	19	15	3	25	13	3
Washington	50('15)	12	3	58('15)	26	5
West Virginia	27	11	5	28	15	5
Wisconsin	5	7	5	22	11	3
Wyoming	25	5	5	30	14	5

* Has 11 joint committees.

TABLE II

Suggested schedule for committee meetings

Group A. To consist of the five important committees: (1) Agriculture, (2) Appropriations, (3) Judiciary, (4) Industrial Affairs and Manufacturing, (5) Public Utilities and Municipalities.

Time of Meeting: Tuesday, Wednesday and Thursday, from 2–4.* Each legislator to have a place on but one of these five committees.

Group B. To consist of four minor committees as follows: (1) Public Efficiency and Civil Service Reform, (2) Education, (3) Enrolled and Engrossed Bills, and (4) Miscellaneous.

Time of Meeting: Tuesdays and Thursdays from 4–6.

Group C. To consist of three minor committees as follows: (1) Elections, (2) Rules, and (3) Rights of Minority.

Time of Meeting: Wednesday from 4–6.

Group D. To consist of three minor committees as follows: (1) Public Welfare, Hygiene and Sanitation, (2) Public Works, (3) Banks and Banking.

Time of Meeting: Tuesdays and Thursdays from 4–6.

Each legislator should be limited to places upon but two of these minor committees. Conflicts will be avoided by choosing committees in groups B and C or C and D.

* There are no sessions held in many legislatures from Thursday until the following Tuesday and the greater portion of the legislators go home over the intervening week end.

TABLE III

Table of standing committees of Illinois House of Representatives 1818–1917

	ASSEM.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
	YEAR	1818	1820	1822	1824	1826	1828	1830	1832	1834	1836	1838	1840	1842	1844	1846	1849	1851	1853	1855	1857	1859	1861	1863	1865	1867	1869	1871	1873	1875	1877	1879	1881	1883	1885	1887	1889	1891	1893	1895	1897	1899	1901	1903	1905	1907	1909	1911	1913	1915	1917
	NO.	*	7	7	7	7	9	9	10	11	14	16	17	17	18	20	20	20	23	25	22	24	24	25	26	28	28	41	39	42	40	40	46	44	46	47	48	53	54	55	58	56	58	57	60	62	57	66	67	33	32
Members																																																				
1. Judiciary		?	5	5	5	5	5	5	7	7	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	16	17	17	17	17	17	17	21	21	23	25	25	25	35	38	25	35	37	44		44	44	45	45
2. Finance		?	3	5	5	5	5	5	7	7	9	9	9	9	9	9	9	9	9	7	9	9	9	9	9	9	9	13	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15			
3. Elections		?	5	5	5	5	5	5	7	7	9	9	9	7	9	9	9	9	5	5	9	9	9	9	8	9	9	11	11	11	11	11	11	15	15	15	15	15	15	19	19	19	19	25	25	25	25	25	25	25	25
4. Petitions		?	5	5	5	5	5	5	7	7	9																																									
5. Propositions and Grievances			3	5	5	5	5	5	7	7	9																																								
6. Militia			3	5	5	5	5	5	7	7	9	9	9	7	9	9	9	9	5	5	9	9	9	9	9	9	9	9	11	11	11	15	15	15	15	17																
7. Internal Improvements			3	4	4	5	5	5	7	7	9	9	9	7	9	9	9	9	9	6	9	9	9	9	9	9	9	9																								
8. Education							5	5	7	7	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	13	15	15	15	15	17	17	17	17	19	21	21	21	21	23	25	25	25	27	27	27	27	27	27
9. Salines							5	5	7	7	9	9	9	7	9	9	9	9	5	5																																	
10. Accounts and Public Expenditures									7	7	9	9	9	9	9	9	9	9	5	9	9	9	9	9	9	9	9																									
11. Penitentiary										7	9	9	8	7	9	9	9	9	5	7	9	9	9	9	9	9	9	13	15	17	15	15	15	15	15	17																	
12. Roads and Canals											9																																							
13. Agriculture											8																	13		15									25	25	25	25	25	25	25	25	25	31	31
14. Commerce and Manufacture											9																																						
15. Canals and Canal Lands												9	8	9	9	9	9	9	9	5	9	9	9	9	9	9	9																						
16. Manufacture and Agriculture												9	9	9	9	9	9	9	9	7	9	9	9	9	9	9	9																						
17. Claims												9	10	7	9	9	9	9	9	8	10	9	9	9	9	9	9	9	9	9	9	9	9	9	15	15	15	15	15	15	15	15	15	15	16	16	16	16			
18. Public Buildings and Grounds												9	10	9	9	9	9	9	5	5	9	9	9	9	9	9	10	13	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	16	16	16	16			
19. State Roads												9	9	9	9	9	9	9	5	5	9	9	9	9	9	9	9																						
20. Counties												9	9	9	11	9	9	9	5	6	9	9	9	9	9	9	9																						
21. Enrolled and Engrossed Bills												9	9	6	6	8	9	9	5	5	9	9	9	9	9	9	9	5	5	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
22. Banks and Other Corporations													9	9	9	9	9	9	9	9	9	9	9	9	9	9	9																						
23. Retrenchment															9	9	9	9	6	5	9	9	9	9	9	9	9	9	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15			

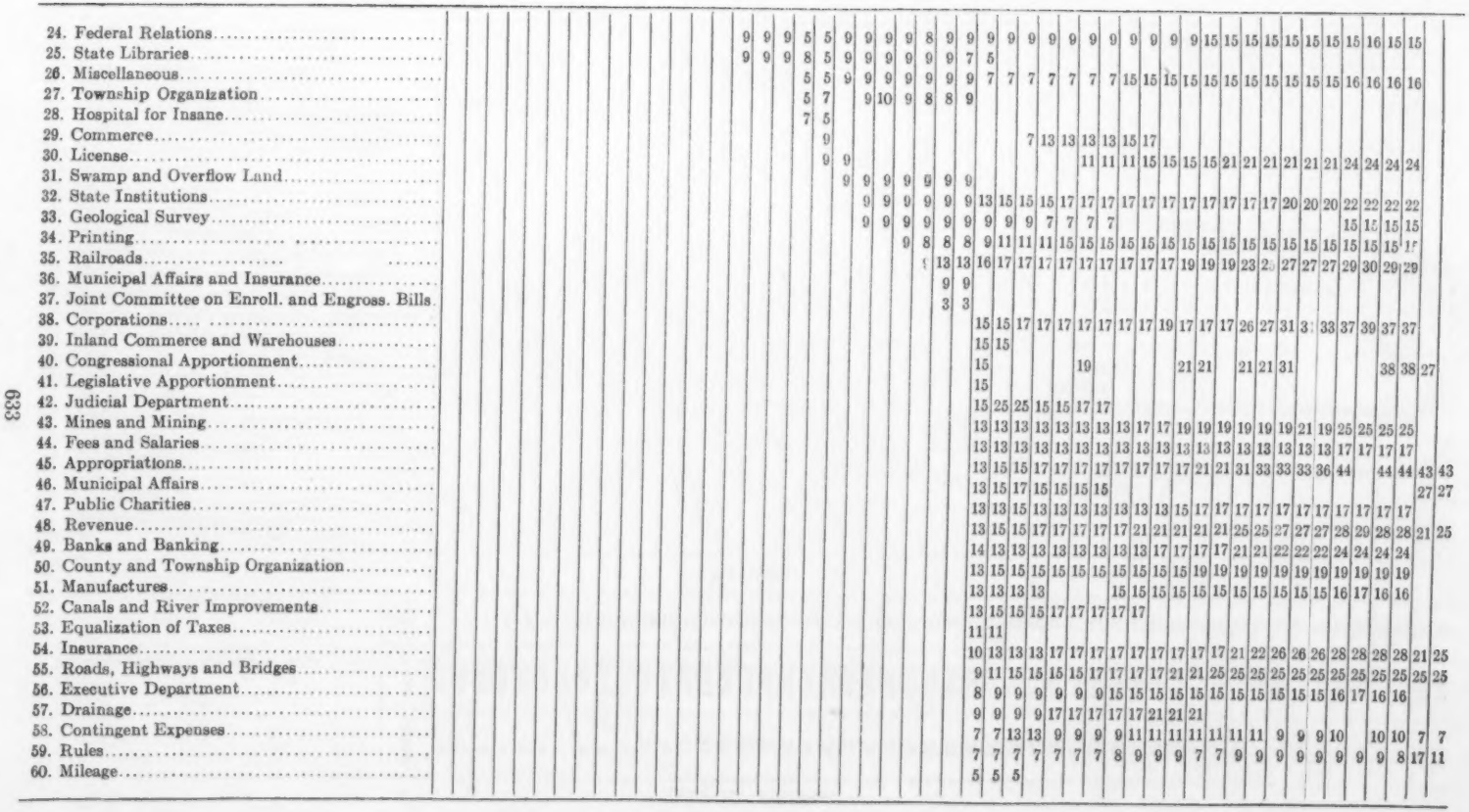
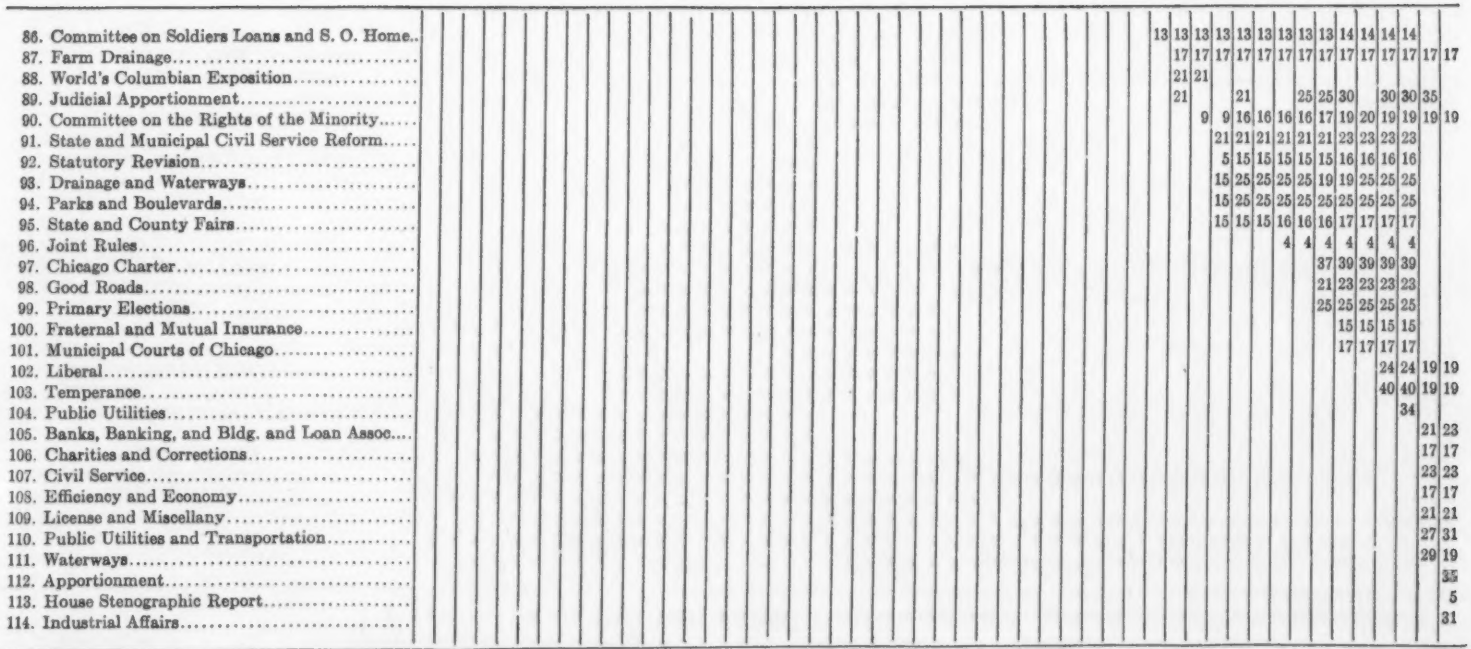

24. Federal Relations
25. State Libraries
26. Miscellaneous
27. Township Organization
28. Hospital for Insane
29. Commerce
30. License
31. Swamp and Overflow Land
32. State Institutions
33. Geological Survey
34. Printing
35. Railroads
36. Municipal Affairs and Insurance
37. Joint Committee on Enroll. and Engross. Bills
38. Corporations
39. Inland Commerce and Warehouses
40. Congressional Apportionment
41. Legislative Apportionment
42. Judicial Department
43. Mines and Mining
44. Fees and Salaries
45. Appropriations
46. Municipal Affairs
47. Public Charities
48. Revenue
49. Banks and Banking
50. County and Township Organization
51. Manufactures
52. Canals and River Improvements
53. Equalization of Taxes
54. Insurance
55. Roads, Highways and Bridges
56. Executive Department
57. Drainage
58. Contingent Expenses
59. Rules
60. Mileage

TABLE III—*Continued*

	ASSEM.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
	YEAR	1818	1820	1822	1824	1826	1828	1830	1832	1834	1836	1838	1840	1842	1844	1846	1849	1851	1853	1855	1857	1859	1861	1863	1865	1867	1869	1871	1873	1875	1877	1879	1881	1883	1885	1887	1889	1891	1893	1895	1897	1899	1901	1903	1905	1907	1909	1911	1913	1915	1917
	NO.		7	7	7	7	9	9	10	11	14	16	17	17	18	20	20	20	23	25	22	24	24	25	26	28	28	41	39	42	40	40	46	44	46	47	48	53	54	55	58	56	58	57	60	62	57	66	67	33	32
Members																																																				
61. Agriculture and Horticulture																													15		15	15				17	17	25	25													
62. Civil Service and Retrenchment																													13																							
63. State and Public Libraries																													7	9	9	9	9	9	13																		
64. Warehouses																														17	17	17	17	17	17	17	17	19	17	17	17	19	21	21	21	20	20	20	20			
65. Horticulture																														7									21	21	21	21	21	21	21	21	21	21				
66. State and Municipal Indebtedness																														13	9	15	15	15	15	15	15	15	15	15	15	15	15	15	15	17	17	17	17			
67. Fish and Game																														9	9	15	15	15	15	15	15	15	21	21	21	21	21	21	21	21	21	21	21	21	21	21
68. Labor and Manufactures																																15	15	15																		
69. Agriculture, Horticulture, and Dairying																																17	17	17																	
70. Senatorial Apportionment																																19						21	21		21		31						38	38	29	
71. To visit Penal and Reformatory Institutions																																5	5	5	5	5	5	5	5	5	5	9	9	9	9	11	11	11	11	5	5
72. To visit Educational Institutions																																5	5	5	5	5	5	5	5	5	5	9	9	9	9	11	11	11	11	5	5
73. To visit State Charitable Institutions																																5	5	5	5	5	5	5	5	5	5	9	9	10	10	11	11	11	11	5	5
74. Judicial Department and Practice																																			17	17	17	21	21	21	25	25	25	25	25	27	29	27	27	23	23
75. Municipal Corporations																																			15	15	19	21	21	21	23	25	21	25	28	34	34	34	34		
76. Labor and Industrial Affairs																																			15	15	15	15	17	17	17	17	17	17	17	18	18	18	18		
77. Sanitary Affairs																																			15	15	15	15	15	15	15	15	15	15	15	17	17	17	17		
78. Geology and Science																																			7	11																
79. Live Stock and Dairying																																				17	17	21	21	21	21	24	21	21	21	21	24	21	21		
80. Canals, River Improvements and Commerce																																					21	21	21	21	21	21	21	21	21	23	26	23	23		
81. Building Loan and Homestead Associations																																					17	17	17	21	21	21	21	21	21	23	23	23	23		
82. Military Affairs																																					17	17	17	17	17	18	18	18	18	19	19	19	19	19	19
83. History, Geology and Science																																					11	11	15	15	15	15	15	15	15						
84. Libraries																																			13	13	13	13	13	13	21	21	21	21	21	21	21	21		
85. Penal and Reformatory Institutions																																					17	17	21	21	23	23	23	23	23	23	23	23	23		



* Number of members not definite, probably between three and five—Special Committee on Bill Drafting.

TABLE IV

Standing committees of Illinois State Senate. 1818–1917.

	ASSEM.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
	YEAR	1818	1820	1822	1824	1826	1828	1830	1832	1834	1836	1838	1840	1842	1844	1846	1848	1851	1853	1855	1857	1859	1861	1863	1865	1867	1869	1871	1873	1875	1877	1879	1881	1883	1885	1887	1889	1891	1893	1895	1897	1899	1901	1903	1905	1907	1909	1911	1913	1915	1917
	NO.	3	4*	7†		7	8	8	8	8	12	15	16	18	18	18	18	18	20	21	17	19	20	20	20	23	23	29	32	34	31	32	33	32	33	36	35	39	39	41	44	39	38	39	44	48	46	41	51	26	33
1. Judiciary				4	3	5	5	5	5	5	7	6	6	7	7	9	7	7	7	7	7	7	7	8	8	9	9	13	15	15	15	17	17	17	19	23	23	26	24	24	27	20	19	21	25	29	29	26	27		
2. Finance	?	?	3	3	5	5	5	5	5	5	7	5	5	6	5	7	5	5	5	7	7	7	7	7	7	8	7	9	9	9	9	9	9	9	9	9	9	10	10	10	9	9	10	9	9	9		12		
3. Elections		?	3	5	3	3	5	5	5	5	7	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	4	5	9	7	9	9	9	9	15	15	15	15	14	14	12	12	15	13	13	11	9	18	24	17	21
4. Petitions		3		5	5	5	5	5	5	5	7	6	5	5	6	5	5	5	5	5	5	5	5	5	5	5	4	5																							
5. Military Affairs					5	5	5	5	5	5	7	6	6	7	5	6	5	5	6	5	5	5	5	5	5	7	7	5	5	5	13	13	13	13	13	13	12	13	13	13	13	14	10	10	7	5	7				
6. Internal Improvements				5	3	5	5	5	5	5	7	6	5	5	5	7	5	5	9	7	7	7	7	7	7	7																									
7. State Salines					5	5	5	5	5	5	7	6	5	6	5	6	5	5	5	5																															
8. Seminary, School Lands and Education					3		5	5	5	5	7	7	5	6	6	6	5	5	5	5																															
9. State Roads											7	5	5	6	5	5	5	5	5	5	5	5	5	5	5	5	4																							
10. Public Accounts and Expenditures											7	5	5	7	7	5	5	5	7	5	5	5	5	5	5	5	7																							
11. Agriculture				5	3						7								5	5	5	5	5	5	5	5	6																				10	12	26	18
12. Enrolled Bills	1	1	1	1							2	2	2	2	2	2	2	2	3	3	3	3	3	3	4	4	4																							
13. Internal Navigation												6	7	6	5	9	6	6	5	5	5	5	7	5	5	5																							
14. Canals and Canal Lands												5	5	5	5	7	5	5	6	5	5	5	7	7	7		7																						
15. Public Buildings and Grounds					3							5	5	6	5	5	5	5	5	5								9	9	7	9	9	9	9	13	13	13	13	13	13	13	12	5	6				6			
16. Penitentiary												5	6	8	5	7	5	5	5	5		7	9	9	5	9	9																							
17. Counties													5	7	6	5	5	5	5	5																													
18. Incorporations														5	5	6	5	5	5	7																												
19. Retrenchment														5	5	7	5	5	5	5																												
20. Township Organization																			5	5																														
21. Public Printing																				5																													
22. Banks and Corporations																					6	9	9	9	9	9	9																							
23. Education																					7	7	7	7	7	7	7	9	9	3	11														18	29	25	19	29	32	27
24. Township Organization and Counties																					7	7	7	7	7	5	5	7	9	11	13	13	13	15	15	15	15	15	15	15	15	12	1.	10	4	7	9	9	10	17	9
25. State Inst., Public Bldgs. and Grounds																					7	9				9																								
26. Saline and Swamp Lands																					5	5	5	5	5	5	4																							

27. Geology																					7	7	7	7	7	7																								
28. Federal Relations																						9	9	9	8	7	7	7	7	9	9	9	9	9	9	9	9	9	9	7	7									
29. State Institutions																						9	9		9	9																								
30. Railroads																									11	11			15		15	15	15	17	17	18	19	21	20	20	25	35	41	41	25			32	34	15
31. Canals																									7																									
32. Public Buildings and State Library																									4	9																								
33. Printing	?																								5	5	7	7	7	9	9	9	9	9	9	9	9	9	9	9	6									
34. Municipal Corporations and Insurance																										9																								
35. Internal Improvement and Navigation																										9																								
36. Railroads and Warehouses																											13	15		15														41						
37. Revenue																											9	9	13	15	15	15	15	15	19	22	23	23	23	25	20	23	21	17	17	17	25	16		
38. Expenses of the General Assembly																											7	7	7	7	7	7	7	7	7	7	9	9	9	9	3									
39. Municipalities																											9	9	11	11	13	13	15	15	15	15	15	18	18	18	21	26	25	16	19	17		13		18
40. Insurance																											9	9	11	11	13	13	13	13	13	13	15	15	15	15	18	24	27	26	31	21	12	19	32	23
41. Corporations																											9	9	9	9	9	13	15	15	15	14	15	15	15	15	18	24	27	28	25		29	16		
42. Banks and Banking																											7	5	7	7	7	7	7	7	7	9	9	11	11	14	15	15	18	17	24	13	18	22		
43. State Charitable Institutions																											9	9	15		15	15	15	15	15	15	15	15	15	15	15	15	10	7	6					
44. Penal Institutions																											9	13	13																					
45. Reformatory Institutions																											7	7	7																					
46. Canals and Rivers																											10	13	13	15	15	15	15	15	15	15	15	15	15	15	15	16	12	11	11	9		16		
47. Apportionment																											19																							
48. Agriculture and Drainage																											7	7	9	11	15	15	15	17	17															
49. Manufactures and Mining																											7																							
50. Fees and Salaries																											9	9	9	9	9	9	9	9	9	9	9	9	9	9	12	12	11	7	5	5		6		
51. Roads and Highways																											7																				6			
52. State Library																											5	5	5	9	9	9	9	9	9															
53. Engrossed and Enrolled Bills																											5	5	5	5	5	5	5	5	5	5	5	5	5	7	7	5	5	6	3	5		3	3	3
54. Geology and Science																											5	5	5	9	9	9	9	9	9												3			
55. Appropriations																												9	13	15	15	15	15	15	15	15	16	17	17	17	19	18	18	19	19	27		38	39	43
56. Judicial Circuits																												13																			28			
57. Horticulture																												7	7	7	7	7	7	7	7															
58. Mines and Mining																												9	9	11	11	11	11	15	15	15	15	15	15	15	15		9	12				11		
59. Manufactures																												7	7	7															8	5		15		
60. Roads, Highways and Bridges																												9	9	9	9	9	15	15	15	15	15	15	15	15	15	13	11	13	9	5	7	28	24	25
61. Miscellany																												7	7	9	9	9	13														7			
62. Judicial Department																													15	11	13	13	15	15	15	15														
63. Warehouses																													9		11	11	11	11	11	12	13	13	13	13	12	16	12		11	9				
64. State Educational Institutions																													13																					

TABLE IV—*Continued*

	ASSEM.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
	YEAR	1818	1820	1822	1824	1826	1828	1830	1832	1834	1836	1838	1840	1842	1844	1846	1848	1851	1853	1855	1857	1859	1861	1863	1865	1867	1869	1871	1873	1875	1877	1879	1881	1883	1885	1887	1889	1891	1893	1895	1897	1899	1901	1903	1905	1907	1909	1911	1913	1915	1917
	NO.	3	4*	7†		7	8	8	8	8	12	15	16	18	18	18	18	18	20	21	17	19	20	20	20	23	23	29	32	34	31	32	33	32	33	36	35	39	39	41	44	39	38	39	44	48	46	41	51	26	33
65. State Charities and Educational Institutions																															15																					
66. Penal and Reformatory Institutions																															15	15	15	15	15	19	19	19	19	19	18	18	11								
67. Education and Educational Institutions																																11	11	13	13	13	13	13	15	15	16	15	16	22							
68. Labor and Manufactures																																7	7	7	15	15	15	15	15	15	18	15	12	10							
69. Congress and Senate Apportionment																																	19																		
70. License and Miscellany																																			13	13	13	13	13	13	15	15	12	13	10	13	15	16	15	14
71. Rules																																			8	8	8	9	9	9	7	7	5	3	3	3	3	5		10
72. To visit State Charitable Institutions																																				2	2	3	3	3	3	3	3	3	3	3	3	3	5	2
73. To visit Penal and Reformatory Institutions																																				2	2	3	3	3	3	3	3	3	3	3	3	3	5	2
74. To visit Educational Institutions																																				2	2	3	3	3	3	3	3	3	3	3	3	3	5	2
75. Agriculture, Horticulture and Farm Drainage																																					18	18	23											
76. State Library, Arts and Sciences																																					9	9	11	11	12	12	9							
77. Waterways and Drainage																																					19	9	11	11	15	15	14	20	17					
78. Judicial Department and Apportionment																																						19	21										
79. World's Columbian Exposition																																						21	21										
80. Congressional Apportionment																																						15	21		22	22	39					31	33		36
81. Senatorial Apportionment																																						15	24	24	25		39					25	25		
82. Building and Loan Associations																																						19	19	19	19	15	15	12	9	5	5		10		
83. Judicial Department and Practice																																								21	21	18	18	15	18	21	21	18	16		24
84. Lincoln Monument																																								23	7										
85. Agric., Hortic., Live Stock and Dairying																																								15											
86. Farm Drainage																																								15	15					9	9		12		
87. Fish and Game																																								15	15	15	16	16	14	9	9	10	12	21	15
88. Agriculture and Horticulture																																									17	17	18	16	11	8	10					
89. Live Stock and Dairying																																									17	16	17	21	11	10	9	10	22		26
90. Commerce																																									12										
91. Judicial Apportionment																																									19			11			17	19	8		

92. Contingent Expenses	4	3	3	3	3	4	3	3	3
93. Civil Service		10	9	9	9	13	16		
94. Parks and Boulevards		18	16	14	17	10	14		
95. Public Accounts		8	5						
96. Chicago Charter			21	26	25		22		
97. Expend. and Care of Cap. and Exec. Mans			4	4					
98. Fraternal Insurance			11	6					
99. Geological Survey			4	3	3				
100. Penal Institutions			12	7					
101. Primary Elections			13	17	17	15	16	18	
102. Reformatory Institutions			8	6					
103. State Normal Schools			7	9	9		8		
104. University of Illinois			5	9	9		12		
105. Cook County Affairs				12	13	16	14		
106. Farmers Mutual Insurance				10					
107. Labor, Mines and Mining				10	9	9		18	18
108. Municipal Courts				10	9	9	12		
109. Sanitary District Affairs				17	17	16	19		
110. Waterways					33	28	26	33	18
111. Charity, Penal and Reformatory Institutions					24	19	16		
112. Corporations and Public Utilities					17				
113. Farmers Mutual and Fraternal Insurance					9				
114. Banks and Building and Loan Associations						13		30	21
115. Constitutional Amendments						12	21	21	11
116. Executive Committee						5	8	14	14
117. Military and Naval Affairs						7	10		
118. Public Utilities						19	24	45	28
119. Revenue and Finance						15		19	18
120. Labor							13		
121. Warehouse and Cold Storage							26		
122. Agriculture, Live Stock and Dairying								26	
123. Charity, Penal and Reform Institutions								29	10
124. Judiciary and Judicial Practice								24	
125. Public Efficiency and Civil Service								18	27
126. Community Welfare									15
127. Consolidated State Agencies									33
128. Public Health, Hygiene and Sanitation									17
129. To edit Debates									3

* Special Standing Committee on Vice and Immorality.

† Special Standing Committee on Abrogation of Slavery.

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON CONSTITUTIONAL QUESTIONS[1] III
1914–1917

THOMAS REED POWELL
Columbia University

V. RACE DISCRIMINATION

Two instances of race discrimination which came before the court were aimed against aliens. Truax v. Raich[2] annulled an Arizona statute which required every employer of not more than five workers to employ not less than 80 per cent qualified electors or native born citizens of the United States. The decision was based, not only on the equal protection clause, but also on the principle that the states must not interfere with the acknowledged powers of the nation. The power to admit aliens which Congress possesses and has exercised would be nugatory if the states after their admission could deny them the opportunity of a livelihood.

But neither of these principles was held applicable to the exclusion of aliens from employment on public works. The opinions in Heim v. McCall[3] and Crane v. New York[4] went so far as to declare that a state must be as free as an individual to decide for itself what persons shall be employed on work done

[1] For the first two installments of this article see 12 *American Political Science Review* 17–49 (February, 1918) and 427–457 (August, 1918).

[2] (1915) 239 U. S. 33. See 22 *Case and Comment* 780, 29 *Harvard Law Review* 219, 9 *Maine Law Review* 126, 64 *University of Pennsylvania Law Review* 616, and 3 *Virginia Law Review* 398.

[3] (1915) 239 U. S. 175. See T. R. Powell, "The Right to Work for the State," 16 *Columbia Law Review* 99. See also 4 *California Law Review* 405, 16 *Columbia Law Review* 67, 1 *Cornell Law Quarterly* 175, 29 *Harvard Law Review* 452, 2 *Iowa Law Bulletin* 140, 14 *Michigan Law Review* 246, 1 *Southern Law Quarterly* 165, 1 *Virginia Law Register*, n. s. 707, 710, and 3 *Virginia Law Review* 390. For comments on the decision in the state court see 15 *Columbia Law Review* 263, 28 *Harvard Law Review* 628, and 13 *Michigan Law Review* 695.

[4] (1915) 239 U. S. 195.

for it. Yet it must be seriously doubted whether the court by actual decision would go so far as to sanction discriminations against Quakers or Methodists or Republicans or Democrats. The exclusion of aliens may be justified on grounds which would not apply to other whimsicalities.

Negroes were the butt of the other examples of race discrimination with which the court had to deal. Three cases annulled the so-called "Grandfather clauses" of state election laws, whereby those whose ancestors were electors prior to the enactment of the Fifteenth Amendment are excepted from the literacy test imposed on others. The court had no difficulty in discovering that the effect of this was to exclude all black illiterates, while admitting many Caucasians whose adventures in chirography were equally modest. The invalid exception to the literacy test was held to make the test itself invalid. Myers v. Anderson[5] applied to the state election officials, in favor of negroes whom they had excluded from voting, the provisions of the federal statute giving a right of action to citizens deprived of the enjoyment of any of the rights secured to them by the Constitution. Guinn v. United States[6] held that such act subjected the officials to conviction under the Act of Congress penalizing a conspiracy to injure, oppress, threaten or intimidate any citizen in the free exercise of any right or privilege secured to him by the Constitution or laws of the United States. And United States v. Moseley[7] applied the same statute to officials who omitted to count and return the votes cast by negroes. In this case Mr. Justice Lamar dissented, on the ground that the repeal by Congress of sections specifically referring to election offenses indicated that the provisions as to conspiracy were not designed to apply.

The Oklahoma separate coach law came before the court in McCabe v. Atchison, T. & S. F. R. Co.[8] A bill for injunctive

[5] (1915) 238 U. S. 368.

[6] (1915) 238 U. S. 347. See 81 *Central Law Journal* 19, 1 *Cornell Law Quarterly* 32, 8 *Lawyer and Banker* 233, 1 *Southern Law Quarterly* 46, and 3 *Virginia Law Review* 74.

[7] (1915) 238 U. S. 383.

[8] (1914) 235 U. S. 151. See 49 *American Law Review* 600, 80 *Central Law Journal* 43, 28 *Harvard Law Review* 417, 18 *Law Notes* 182, 213, 50 *National Corporation Reporter* 595, and 20 *Virginia Law Register* 781.

relief was dismissed because it did not appear that the complaining negroes had as yet been refused accommodations, or that those who might be refused would not have an adequate remedy at law. But the opinion of the court made it clear that negroes could not be excluded from parlor cars and dining cars furnished for white passengers, unless equal accommodations of this character were provided for negroes. The argument that there would not be a sufficient number of negroes desiring these expensive accommodations to justify making provision for them was dismissed with the answer that the constitutional right to equal protection of the laws was a personal one, and that the only justification for excluding an individual negro from any particular conveyance enjoyed by a white man is that equally good accommodations are afforded him. Chief Justice White, and Justices Holmes, Lamar and McReynolds confined their concurrence to "the result," which was merely the dismissal of the bill. This indicates that the court will be divided when the question passed upon in the opinion is squarely presented for decision.

Reynolds v. United States[9] declared that a statute of Alabama in its actual operation resulted in the imposition of involuntary servitude forbidden by the Thirteenth Amendment. The law permitted persons convicted of minor crimes and sentenced to imprisonment in default of payment of a fine, to be released upon making a contract to work for a fixed term for one who became surety for the payment of the fine. For breach of this contract he was again subject to fine and imprisonment. It is not difficult to perceive how an initial misstep might get an erring negro into the toils of a system which would forcibly remind him of antebellum conditions.[10] Mr. Justice Holmes, who

[9] (1914) 235 U. S. 133. See 2 *Virginia Law Review* 385.

[10] The case before the court involved two negroes. Rivers had been convicted of petit larceny and fined $15 with costs of $43.75. Reynolds paid his fine and costs and in turn therefor Rivers agreed to work for him nine months and twenty-four days at $6 per month. He quit after a month and was thereupon arrested and convicted and fined one cent, with costs of $87.05. To avoid imprisonment he made a contract with one Broughton as surety whereby Broughton became responsible for the fine and costs and Rivers agreed to work for him for fourteen months and fifteen days at the rate of $6 per month.

In the case of Fields, the other negro, a conviction of selling mortgaged property brought a fine of $50 with costs of $69.75. The unfortunate saved himself

had dissented in Bailey v. Alabama[11] concurred in the Reynolds case, saying in a separate opinion that "the successive contracts, each for a longer term than the last are the inevitable, and must be taken to have been the contemplated, outcome of the Alabama laws. On this ground I am inclined to agree that the statutes in question disclose the attempt to maintain service that the Revised Statutes forbid." In holding that the Alabama laws violated the Act of Congress, the court necessarily held that they imposed what was involuntary servitude within the meaning of the Thirteenth Amendment.

It might be questioned whether the Reynolds case is properly put under the head of race discrimination. The Thirteenth Amendment makes no mention of race, color or previous condition of servitude. The Alabama law might, so far as its terms disclose, operate against whites as well as blacks. But it can hardly be doubted that it was aimed against negroes. Very likely the Florida statute sustained in Butler v. Perry[12] bears more heavily on the negro than on the white man. This required all able-bodied males between twenty-one and forty-five to work six days a year on the roads, or to provide a substitute, or pay three dollars. The alternatives are less likely to be taken advantage of by large numbers of negroes than by whites. But the question of possible discrimination was not raised in the case, and for all that appears the complainant was white.

VI. THE OBLIGATION OF CONTRACTS

All of the complaints raised under the clause forbidding the states to pass any law impairing the obligation of contracts involved alleged impairments of contracts made by the state itself or some subordinate governmental authority. Several cases reiterated the established doctrine that the clause affords

from imprisonment by agreeing to work for one who became his surety, at the rate of $6 a month for nineteen months and twenty-nine days. In both cases the contract included board, lodging and clothing, but the money payment stipulated in the contract was just enough to reimburse the surety for payment of the fine, so that none of it would find its way to the pocket of the indented laborer.

[11] (1911) 219 U. S. 219.

[12] (1916) 240 U. S. 328.

no protection against a change in judicial decision by a state court, because that is not regarded as the passing of a law by the state.[13] Manila Investment Co. v. Trammell[14] took the same view of the breach by a state board of a contract to convey land. Banning Co. v. California[15] found that under the statutes in question no binding contract to convey land was consummated until actual payment was made by the intending purchaser, and that therefore the state could change its mind after the complainant had done nothing more than to make application, take the required oath and expend money for a survey. Other cases held that the alleged contract did not come into existence because of the nonoccurrence of a condition precedent,[16] and that the franchise relied on had been lawfully revoked for nonuser.[17]

Several cases involved tax exemptions. Seton Hall College v. South Orange[18] found no contract in an exemption granted several years after the incorporation of the complainant, who had entered upon no new undertaking thereafter and made no promise to do anything in return for the exemption. Weight was given to the fact that when the exemption was granted in an amendment to the corporate charter, there was in force a state statute making all corporate charters subject to legislative alteration and repeal. In Morris Canal & Banking Co. v. Baird,[19] the court, without determining whether the tax exemption originally was a contract, held that at any rate it did not pass to a grantee and lessee of the company originally exempted.

A different attitude was taken by a majority of the court towards the situations presented in Wright v. Central of Georgia Ry. Co.[20] and Wright v. Louisville & N. R. Co.[21] The cases

[13] Willoughby v. Chicago, (1914) 235 U. S. 45; Cleveland & P. R. Co. v. Cleveland, (1914) 235 U. S. 50; Kryger v. Wilson, (1916) 242 U. S. 169.

[14] (1915) 239 U. S. 31.

[15] (1916) 240 U. S. 142.

[16] Louisville & N. R. Co. v. Behrman, (1914) 235 U. S. 164.

[17] New York Electric Lines Co. v. Empire City Subway Co., (1914) 235 U. S. 179.

[18] (1916) 242 U. S. 100.

[19] (1915) 239 U. S. 126.

[20] (1915) 236 U. S. 674.

[21] (1915) 236 U. S. 687.

depend upon their special facts, which are intricate and technical. The charter of a corporation exempted its property from all taxation other than a specified percentage of annual income. It also authorized the grantee to lease and demise the franchise and gave to any such lessee the right to be a common carrier. The minority, consisting of Justices Hughes, Pitney and McReynolds, thought that the case came within the general rule that tax exemptions should be construed as personal to the grantee, and are not transferable and do not run with the property unless the legislature has explicitly declared otherwise. It regarded the so-called lease as the passing of the entire property to the lessee, "to hold, if it pleased in perpetuity, subject to an annual charge of the amount specified." The majority, however, thought that the property was still that of the lessor and that the statute sought to tax the property of the lessor under the guise of reaching some separate interest of the lessee. They are careful to state that they do not suggest "that the contract in the charters of the lessor passed by assignment to the lessee," and do not imply "that the property was exempted generally, into whosesoever hands it might come."

Contentions that provisions in public-utility franchises authorizing the exaction of a five-cent fare were contracts were passed upon in two cases. Milwaukee Electric Railway & Light Co. v. Railroad Commission[22] rejected the contention, finding that the state court was warranted in holding that the municipal authorities had not been granted authority by the legislature to make an irrepealable contract which would "deprive the legislature of the right to exercise in the future an acknowledged function of great importance."

In Detroit United Railway v. Michigan,[23] the company objected to a decision of the state court which held that an agreement on its part to sell tickets good on certain hours in the day at the rate of eight for twenty-five cents over "any of its lines in the city" covered lines in territory subsequently annexed to the city. It was conceded that the original franchise granted by

[22] (1915) 238 U. S. 174.

[23] (1916) 242 U. S. 238. See 15 *Michigan Law Review* 430, and 26 *Yale Law Journal* 500.

a township prior to its annexation to the city constituted a contract permitting the exaction of a flat five-cent fare. The minority of the Supreme Court, consisting of Justices Clarke and Brandeis, thought the interpretation of the subsequent agreement as including territory which might in the future be annexed to the city was merely a question of the law of contracts, which lay within the final determination of the state court, whether right or wrong. But the majority insisted that the interpretation was erroneous and that the state court by applying it to the situation before it necessarily gave an effect to the ordinance annexing the township to the city, which impaired the obligation of the contract existing between the road and the township.

In other cases the complainants sought unsuccessfully to persuade the court that they had contracts which had been impaired. In Seaboard A. L. R. Co. v. Raleigh[24] an ordinance permitting a railroad to place its tracks on the sidewalk was held to be not a contract, but a revocable license. The facts that the permission was unlimited in time and was granted after the creation of the railroad company and the construction of its road were deemed significant and controlling, in the absence of any specific language to the contrary. In Southern Wisconsin R. Co. v. Madison[25] a street railroad was made to pay the cost of an asphalt pavement between its tracks and for the space of a foot on either side. The company's objection was based on the claim that the charter under which it then operated, by omitting the provision in a prior charter imposing on it the duty to pave, therefore negatived the duty. But the Supreme Court sustained the state court in holding that the duty to pave was embraced within the admitted duty imposed by the charter to keep the space in question "in proper repair."

In New Orleans Taxpayers' Protective Ass'n. v. New Orleans[26] it was urged that since the vote authorizing the municipal acquisition of a water plant provided for the construction "of a free sewerage system, with free water therefor," water for drinking

[24] (1916) 242 U. S. 15.
[25] (1916) 240 U. S. 457.
[26] (1915) 237 U. S. 33.

and domestic purposes must be furnished free, because it all went ultimately to the sewer. But the Supreme Court had no difficulty in deciding that the only contract for free water was for such as "was discharged into the sewers for the purpose of insuring the working of a free sewerage system." This was satisfied by the rules of the water board under which "1000 gallons per quarter are allowed free, for flushing closets."

Long Sault Development Co. v. Call[27] dismissed for lack of jurisdiction a writ of error from the New York court which had decided that the grant to complainants of certain rights in the St. Lawrence River were unconstitutional as an attempt by the state to cede lands held under a trust to control the navigation of the river. The majority held that there was no federal question, since the state court had given no effect to the repealing legislation later passed. It was evident, however, that they approved of the decision of the state court on the constitutional question that the alleged contract never had a valid existence. Justices Pitney and McKenna dissented, assigning briefly that the original grant was a contract and that the state court had given effect to the repealing legislation to impair its obligation.

The last phase of the South Carolina dispensary system came before the court in Carolina Glass Co. v. South Carolina.[28] Funds previously in the hands of the county dispensaries were by command of the legislature transferred to the state treasury. Those who had furnished supplies to the dispensary, and claimed a lien on the funds, objected; but the Supreme Court found that the funds had always been funds of the state, that contracts for the dispensaries were made in behalf of the state, that the state had not consented to be sued, and held therefore that the removal of the funds to the state treasury did not violate the obligation of a contract.

Though Congress is not explicitly forbidden to pass a law impairing the obligation of contracts, Choate v. Trapp[29] decided that the due-process clause of the Fifth Amendment protects

[27] (1916) 242 U. S. 272. See 1 *Minnesota Law Review* 347.
[28] (1916) 240 U. S. 305.
[29] (1912) 224 U. S. 665.

vested rights acquired by contract. In applying this clause Sizemore v. Brady[30] and United States v. Rowell[31] held that congressional statutes respecting Indian lands did not constitute grants *in presenti* so as to inhibit later modifications. Williams v. Johnson[32] took a similar attitude with respect to restrictions imposed by Congress on the alienation of lands allotted to individual Indians. The subsequent removal of the restrictions was sustained. Oregon & C. R. Co. v. United States[33] presented a case of rights lost by misuser. Lands had been granted to a railroad company to be sold to actual settlers in limited quantities at a price not to exceed $2.50 per acre. Many sales had been made in violation of the terms prescribed in the grant. The Supreme Court sustained a decree revesting in the United States the title to the unsold lands, and regulating their future disposition, securing however to the railroad $2.50 per acre, less deductions on account of prior wrongful acts. This case and another between the same parties[34] present a sad history of the diversion of lands intended for actual settlers.

VII. IMMUNITIES OF PERSONS CHARGED WITH CRIME

The provision in the Fifth Amendment against double jeopardy was invoked in three cases. United States v. Oppenheimer[35] held that a previous acquittal on a plea that the offense was barred by the statute of limitations prevented a new indictment, even though the previous determination was erroneous. But in Lovato v. New Mexico[36] the accused was held not to be twice put in jeopardy because he was arraigned and required to plead again after a demurrer to the indictment was overruled. And Morgan v. Devine[37] held that a person was not put in double jeopardy by being punished for stealing postage stamps and

[30] (1914) 235 U. S. 441.
[31] (1917) 243 U. S. 464.
[32] (1915) 239 U. S. 414.
[33] (1916) 243 U. S. 549.
[34] (1915) 238 U. S. 393.
[35] (1916) 242 U. S. 85. See 30 *Harvard Law Review* 400.
[36] (1916) 242 U. S. 199. See 84 *Central Law Journal* 66.
[37] (1915) 237 U. S. 632.

also for breaking and entering a post office with intent to commit a felony, when Congress had made each a separate offense.

The privilege against self-incrimination was unsuccessfully adduced by the respondent in Mason v. United States,[38] who was held in contempt for refusing to answer questions which asked whether a game of cards was going on at the table at which he was sitting and whether he saw anyone playing cards. The answer could not expressly incriminate him because the question did not ask whether he was playing for money. While it might lead to his incrimination, the court said that this was a matter of degree which the trial judge was in a better position to pass upon than any appellate tribunal could be.

A phase of the immunity bath problem came before the court in Burdick v. United States.[39] The city editor of the New York *Tribune* had declined to give to the grand jury the sources of his information relative to certain articles in that paper about customs frauds. His reason was that the information would tend to incriminate him. Later he was presented with a pardon from the President to the end that, being immune from prosecution, he might be forced to answer. This pardon he declined to accept. The court held that the pardon was ineffective unless accepted, and that the respondent was at liberty to decline it and thereby retain his privilege.[40]

The respondent in Badders v. United States[41] claimed that he suffered cruel and unusual punishment and excessive fines because each letter he mailed in pursuance of a scheme to defraud was held to be a separate offense. But the Supreme Court did not share his view. Though sentenced to five years imprisonment on each of seven counts, the periods of imprisonment were concurrent and not cumulative. But the fines of $1000 on each count were cumulative.

[38] (1917) 244 U. S. 362.

[39] (1915) 236 U. S. 79. See 49 *American Law Review* 597, 80 *Central Law Journal* 121, 13 *Michigan Law Review* 427, and 20 *Virginia Law Register* 955.

[40] To the same effect is Curtin v. United States, (1915) 236 U. S. 96.

[41] (1916) 240 U. S. 391.

This completes the cases of criminal prosecution in the federal courts where the specific limitations of the Constitution apply. But the states as well as Congress are forbidden to pass *ex post facto* laws. Malloy v. South Carolina[42] held that the clause was not violated by changing the punishment for murder from hanging to electrocution with an increase in the number of witnesses and applying the new mode to execution for crimes committed before its passage. Mr. Justice McReynolds said that the statute did not change the penalty but only the mode of producing it "together with certain non-essential details in respect of surroundings." He added that "the punishment was not increased, and some of the odious features incident to the old method were abated."

Under the due-process clause of the Fourteenth Amendment a number of complaints against state process were registered. In Southwestern T. & T. Co. v. Danaher[43] a telephone company was relieved of a fine of $6,300 imposed on it for refusing to furnish service to a patron in arrears for past service, where the refusal was not expressly forbidden by statute and there had been no judicial decision indicating that it was unreasonable. The opinion gave weight to the fact that the regulation of the company had been adopted in good faith and had been applied impartially, and that in other jurisdictions such regulations had often been pronounced reasonable and valid. The decision was referred to "the fundamental principles of justice which the constitutional guaranty of due process of law is intended to preserve." It stands for a doctrine that the Fourteenth Amendment requires that a state "make the punishment fit the crime," and that the absence of warning that acts are likely to be held evil reduces the gravity of what is later declared to be an offense. Though the decision of the court was unanimous, it was evidently reached only after some difficulty, for the case was ordered reargued and was not decided until over a year after the reargument. In a

[42] (1915) 237 U. S. 180. See 80 *Central Law Journal* 379, 15 *Columbia Law Review* 524, 6 *Journal of Criminal Law* 436, 19 *Law Notes* 52, 50 *National Corporation Reporter* 697, and 1 *Virginia Law Register*, n. s. 396, 555.

[43] (1915) 238 U. S. 482.

decision rendered a month earlier a sentence of fourteen years for perjury was held not so excessive as to be wanting in due process.[44]

In two cases the indefiniteness of criminal statutes was alleged as a ground of invalidity. In American Seeding Machine Co. v. Kentucky[45] the complaint was sustained. It annulled an anti-trust law which made the unlawfulness of a combination turn on the question whether it was for the purpose or with the effect of raising the selling price of commodities above what would be their market value under fair competition and under normal conditions. In Fox v. Washington,[46] on the other hand, a statute which made criminal the editing of printed matter tending to encourage and advocate disrespect for law was said not to be too indefinite where the state court by implication at least had construed it to apply only to literature that encouraged an actual breach of the law. The case at bar involved an article styled "The Nude and the Prudes" which was held to encourage violation of the laws against indecent exposure. In elaboration of a reference to the duty of a court to construe a statute, wherever possible, so as to avoid doubtful constitutional questions, Mr. Justice Holmes observed that "it does not appear and is not likely that the statute will be construed to prevent publications merely because they tend to produce unfavorable opinions of a particular statute or of law in general." This was in 1915.

The due-process clause was the basis of the complaint of a defendant convicted of murder in a Georgia court, whose conviction was affirmed by the highest state court by a vote of three to three. The lack of merit in his contention was affirmed in Lott v. Pittman[47] on the ground that "the right of appeal is not essential to due process." Only half of the judges of the appellate court who participated in the decision had heard the ar-

[44] Collins v. Johnston, (1915) 237 U. S. 502. This case also held that the extradition treaty with Great Britain does not give to persons extradited for one crime an immunity from prosecution for another crime committed after their return.

[45] (1915) 236 U. S. 660.

[46] (1915) 236 U. S. 273.

[47] (1917) 243 U. S. 588. See 54 *National Corporation Reporter* 862.

gument, and one of the three who voted to affirm had not heard it. But the appellant had been given an opportunity for a re-argument, of which he did not avail himself.

From Georgia also came Frank v. Magnum.[48] After trial and conviction and affirmance of the conviction and denial of a new trial by the appellate court of the state, Frank sought a writ of habeas corpus from the federal district court on the ground that the court which tried him was without jurisdiction. His claim was in substance that the court and jury had been subjected to mob domination to such an extent that there was in effect a "dissolution of the court, so that the proceedings were *coram non judice*." The judges of the Supreme Court were agreed that such a state of affairs would deprive the court of jurisdiction and so render its proceedings wanting in due process. Justices Holmes and Hughes contended that the petition for the writ made out such a case that the district court should grant the writ and determine whether the facts alleged were true. The majority, on the other hand, held that the Supreme Court should not confine its attentions to the allegations set forth in the petition as to what happened at the trial, but should consider all the circumstances disclosed by the record presented, and upon such consideration concluded that the determination of the highest court of the state that the trial court was not dominated by a mob so as to prevent a fair and impartial trial "must be taken as setting forth the truth of the matter." The difference of opinion thus related to questions of fact and to the proper procedure in writs of habeas corpus, rather than to any issue of constitutional law.[49]

[48] (1915) 237 U. S. 309. See G. B. Goldin, "The United States Supreme Court and the Frank Case," 80 *Central Law Journal* 29, and H. Schofield, "Federal Courts and Mob Domination of State Courts," 10 *Illinois Law Review* 479. See also 15 *Columbia Law Review* 166, 545, and 28 *Harvard Law Review* 793.

[49] Another point on which all the members of the court were agreed was that it was not a violation of the *ex post facto* clause if the state court reached a decision as to the waiver of the right to be present at the rendition of the verdict, which was inconsistent with previous decisions, and to the disadvantage of the accused. The clause was said to be directed against legislative action only. See G. B. Goldin, "Presence of the Defendant at Rendition of the Verdict in Felony Cases," 16 *Columbia Law Review* 18.

The minority insisted that "if the petition discloses facts that amount to a loss of jurisdiction in the trial court, jurisdiction could not be restored by any decision above." But the majority answered that the petition also disclosed that the existence of these alleged facts had been negatived by the decision of the highest court of the state, which was not under any possible mob domination, and that it begged the question to treat the respondent's "narrative of disorder as the whole matter." The decision indicates that very clear grounds must exist in cases of this kind before the Supreme Court will disregard the determination of the highest court of the state on a question of fact. There is, however, nothing in the opinion to indicate that a federal district judge would be reversed if he grants the writ and finds the allegations set forth in the petition to be true. The interference of the federal judiciary has the disadvantage that it discharges the prisoner and seems to leave him with the defense of double jeopardy if the state court seeks to try him again. But this particular disadvantage must be weighed against the importance of ensuring that strong local feeling does not prevent a fair trial.

VIII. JURISDICTION AND PROCEDURE OF COURTS

The great majority of cases dealing with the propriety of action taken by the federal courts involve questions of statutory construction and are not within the plot of this story. A few cases, however, mark points in the line which circumscribes the field in which the federal judicial power extends under the Constitution. In Latta & T. Construction Co. v. Raithmoor,[50] the admiralty jurisdiction was held to embrace a libel *in rem* to recover damages against a ship which injured an unfinished pier in a navigable channel. New Mexico v. Lane[51] held that a suit against the secretary of the interior in respect to certain lands whose title was in the United States could not be maintained, as it was in effect a suit against the United States. Ohio v. Hildebrant[52] reaffirmed the doctrine that whether a state has

[50] (1916) 241 U. S. 166.
[51] (1917) 243 U. S. 52.
[52] (1916) 241 U. S. 565.

ceased to have a republican form of government because it has made the referendum a part of its legislative power, is not a judicial question, but a political one, which is solely for Congress to determine. And Bankers Trust Co. v. Texas & P. R. Co.[53] laid down that a corporation created by Congress cannot be regarded as a citizen of any particular state for the purpose of giving jurisdiction to the federal courts on the ground of diversity of citizenship.

Ohio River Contract Co. v. Gordon[54] held that the jurisdiction of a state court over an action for personal injury is not defeated because the injury occurred on land over which the federal government has exclusive legislative jurisdiction. The case also involved the question whether the defendant, a foreign corporation, was doing business within the state so as to be amenable to process. This was answered in the affirmative, in view of the fact that its operations were not confined to the federal reservation.

A number of other cases settled complaints as to the methods by which state or federal courts sought to exercise jurisdiction. Under the due-process clause it was held that a personal judgment against one who has left the state intending not to return cannot be founded on service by publication in a newspaper;[55]

[53] (1916) 241 U. S. 295.

[54] (1917) 244 U. S. 68.

[55] McDonald v. Mabee, (1917) 243 U. S. 90. See 17 *Columbia Law Review* 441, 30 *Harvard Law Review* 761, 15 *Michigan Law Review* 493, 45 *Washington Law Reporter* 329, and 26 *Yale Law Journal* 703. In the opinion of the court Mr. Justice Holmes hinted that in view of the fact that the defendant was still technically domiciled in the state, not having as yet acquired a domicile elsewhere, and since his family was still located within the state, "a summons left at his last and usual place of business would have been enough." But the statement is of course dictum, and is qualified by a "perhaps." The opinion recognizes that some of the language in Pennoyer v. Neff, (1878) 95 U. S. 714, warrants the inference that the rule requiring personal service on nonresidents applies also to residents, but Mr. Justice Holmes plainly implies that some relaxation of that rule might be made in the case of absent citizens.

The case came up in curious fashion. After the rendition of the judgment in issue, the plaintiff sued again on the same cause of action, and the defendant resisted, urging that suit was barred by reason of the prior judgment obtained against him on service by publication. It was the plaintiff who claimed that the

that a foreign corporation which has done no business in the state and has no property there cannot be brought into court merely by service on a resident director;[56] and that a foreign corporation, even though doing business in a state, cannot be brought into court by service on a state official designated by statute, if the cause of action arose in another state.[57] But if the foreign corporation has filed a stipulation consenting in advance to service on a state official, there is no lack of due process in holding that such consent covers suits on causes of action arising without, as well as within, the state.[58] "When a power is actually conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts." So also there is no denial of due process in holding that a defendant who permits a judgment in its favor in a state court to be reviewed on its merits on appeal, without interposing a cross appeal to question the overruling of its motion to quash the service, thereby loses its right to contest further the question of jurisdiction;[59] and in holding that a defendant sued on a judgment ob-

former judgment in his favor was void because it denied due process to the defendant. Mr. Justice Holmes declared that "the obligations of the judgment are reciprocal, and the fact that here the defendant is asserting and the plaintiff denying its personal effect does not alter the case." The judgment being absolutely void, its invalidity could be relied on by the person in whose favor it was obtained, where it was asserted as a defense against him in another action.

[56] Riverside & D. R. Cotton Mills Co. v. Menefee, (1915) 237 U. S. 189. See Gerard Henderson, *The Position of Foreign Corporations in American Constitutional Law*, pages 64–87. See also 80 *Central Law Journal* 397. It had previously been established that a judgment founded on such service was not entitled to recognition in other states, but this was the first time that the Supreme Court definitely laid down that it would grant relief against the enforcement of such a judgment in the courts of the state which rendered it.

[57] Simon v. Southern R. Co., (1915) 236 U. S. 115. See W. F. Cahill, "Jurisdiction over Foreign Corporations and Individuals who Carry on Business within the Territory," 30 *Harvard Law Review* 676. See also 28 *Harvard Law Review* 804, and 13 *Michigan Law Review* 520. In this case the federal district court, acquiring jurisdiction by reason of diversity of citizenship, enjoined the judgment creditor from enforcing his judgment, and the Supreme Court sustained the injunction, declaring the judgment absolutely void under the due-process clause.

[58] Pennsylvania Fire Ins. Co. v. Gold Issue Min. & M. Co., (1917) 243 U. S. 93. See 84 *Central Law Journal* 359, 2 *Southern Law Quarterly* 235, and 26 *Yale Law Journal*, 794.

[59] Western Life Indemnity Co. v. Rupp, (1914) 235 U. S. 261. The court, in approving the practice here declared not inconsistent with due process of law,

tained against it in a sister state, who unsuccessfully contested in that state the validity of the service, cannot raise the issue again when sued on the judgment.[60]

The other due-process questions are more difficult to classify. In Coe v. Armour Fertilizer Works[61] a stockholder in a corporation successfully resisted a procedure whereby without any notice to him an execution issued against him for the unpaid subscription on his stock, after a return of *nulla bona* upon an execution against the corporation. The defect of lack of notice was held not to be cured by a provision allowing the stockholder to litigate in subsequent proceedings the question whether he was a stockholder or the amount still unpaid on his stock. But Holmes v. Conway[62] held that under the peculiar circumstances of the case a summary order of a court directing a litigant to pay into

remarked that it prevented a plaintiff from seeking to get a binding judgment in his favor by the exercise of the court's jurisdiction, and at the same time reserving a chance to defeat a judgment in favor of his opponent on the ground that the court was without jurisdiction. The practice in the federal courts of allowing questions of jurisdiction to be raised at any stage in the proceedings was said to be based on the rule that the parties cannot by consent or waiver confer on federal courts a jurisdiction not granted them by the Constitution, and therefore to set no standard which must be followed by state courts.

[60] Chicago Life Ins. Co. v. Cherry, (1917) 244 U. S. 25. See 85 *Central Law Journal* 1, 55 *National Corporation Reporter* 9, 27 *Yale Law Journal* 121, and 45 *Washington Law Reporter* 535. The Supreme Court declared that even if the decision of the state court was erroneous, this was merely a mistake of law, and did not constitute a violation of due process. Mr. Justice Holmes observed that "whenever a wrong judgment is entered against a defendant, his property is taken when it should not have been; but whatever the ground may be, if the mistake is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights."

The brief for the defendant in error contended that there was no federal question to give jurisdiction to the Supreme Court on a writ of error; but the Supreme Court by taking jurisdiction indicates that a state may deny due process of law by giving to the judgment of a sister state more faith and credit than that to which it is entitled. But the opinion warrants the inference that the only case in which the Supreme Court would grant relief is where the sole issue in the court below is whether the court first rendering the judgment could constitutionally exercise jurisdiction, and where the second state by its decision has given effect to a judgment which the Supreme Court deems absolutely void.

[61] (1915) 237 U. S. 413.

[62] (1916) 241 U. S. 624.

the treasury of the court the proceeds of certain fire insurance policies was not wanting in due process. Mr. Justice Pitney dissented, and the majority opinion conceded that the case was a difficult one, but in view of the facts that the complainant had been accorded two hearings at previous times, had been present at every stage of the proceedings, had failed to suggest surprise or prejudice because of the absence of formal notice, or to request a further hearing, it was thought that he had received the substance of what due process requires.

Statutes imposing conditions or limitations on access to the courts were sustained in three cases. Grant Timber & Mfg. Co. v. Gray[63] sanctioned the Louisiana procedure whereby a defendant in a possessory action for land coupled with a demand for damages cannot bring an action to determine the title until the possessory action has been ended and he has paid any damages assessed against him. Christianson v. King County[64] sustained a territorial statute of Washington giving authority to the probate court to declare the lands of an intestate escheated to the county for want of heirs, after appropriate notice, and cutting off the right of claimants who do not appear. In O'Neil v. Northern Colorado Irrigation Co.[65] complaint was made of a statute which as interpreted by the state court prevented a claimant to water rights from asserting his claim after four years from the time when another appropriator was accorded a priority. The complainant was accorded no hearing when the other appropriator was granted his priority, because the two were in different water districts, and the decision of the state court that his rights lapsed after four years was not announced until after the four years had expired. But the court held that he could not complain because the construction of the statute surprised him, when it was too late for him to act on the construction and save his rights. And it said further that, even if the construction was inconsistent with prior ones, this was only a departure by a court from a rule of property previously established, and that this in itself is not a denial of due process.

[63] (1915) 236 U. S. 133.
[64] (1915) 239 U. S. 356.
[65] (1916) 242 U. S. 20.

Two cases involved the propriety of statutes allowing attorneys' fees to successful litigants. Meeker v. Lehigh Valley R. Co.[66] sustained a provision in the Interstate Commerce Act which as construed allowed a reasonable attorney's fee to shippers who prosecute to success in the courts an action to recover damages awarded against a carrier by the interstate commerce commission. But Atchison, T. & S. F. R. Co. v. Vosburg[67] found a denial of equal protection of the laws in a provision in a Kansas reciprocal demurrage law which allowed an attorney's fee to a shipper who prosecutes a successful action against a carrier for failure to furnish cars, when no such fee is allowed to the carrier in a successful action against a shipper who has failed to use cars promptly.

Other decisions found no want of due process in requiring a surety on a bond for the release of attached property to agree to submit to the jurisdiction of the court in which the attachment lies and in making a final judgment for the plaintiff in the action a joint one against the defendant and the surety to the extent of the appraised value of the attached property;[68] in enforcing against the bank deposit of a nonresident husband an order for alimony, where before the filing of the bill the court issued an order restraining the bank from paying the deposit to the husband;[69] in requiring a defendant to go to trial after amendment of the complaint where he alleged that he was unprepared for the amendment but conceded that he was not surprised;[70] in holding that defendant by consenting to the revivor of an action in the name of the plaintiff's executrix was estopped later to challenge her capacity to maintain the action;[71] in hearing a case upon the transcript of the evidence at a former trial, where the transcript was used with the consent of both parties;[72] and in affirming the

[66] (1915) 236 U. S. 412.

[67] (1915) 236 U. S. 56. See 81 *Central Law Journal* 146.

[68] United Surety Co. v. American Fruit Product Co., (1915) 238 U. S. 140.

[69] Pennington v. Fourth National Bank, (1917) 243 U. S. 269. See 84 *Central Law Journal* 319, 16 *Michigan Law Review* 184, 3 *Virginia Law Register*, n. s. 68, and 26 *Yale Law Journal* 66.

[70] Seaboard A. L. R. Co. v. Koennecke, (1915) 239 U. S. 352.

[71] Parker v. McLain, (1915) 237 U. S. 469.

[72] De La Rama v. De La Rama, (1916) 241 U. S. 154.

judgment of the trial court notwithstanding error committed against the appellant, where the appellate court found that the error was not prejudicial.[73]

In a number of cases defendants sued in state courts on causes of action arising under the federal Employers' Liability Law contended unsuccessfully that the proceedings must conform to the requirements of the Seventh Amendment. The court held that the amendment applied only to proceedings in the federal courts and not to proceedings in state courts under federal statutes. The cases sustained verdicts rendered under the Virginia procedure which provides for a jury of seven in civil causes,[74] and under the Minnesota procedure which permits a jury to reach a verdict by a five-sixths vote if the jury has been unable to reach a unanimous agreement after deliberating for twelve hours.[75] A similar result was reached with respect to the procedure of Kentucky[76] and Oklahoma[77] permitting verdicts to be reached by nine jurors out of twelve.

The full faith and credit clause brought to the court a number of cases in which state courts had declined to give effect to the judgments of sister states. In none of the cases to be considered had the person against whom it was sought to apply the judgment been personally served with process in the jurisdiction rendering the judgment. And in only two cases had the judgment been rendered against the person now sought to be foreclosed by it.

One of these two cases was Baltimore & O. R. Co. v. Hostetter[78] which reaffirmed previous holdings that a judgment against a garnishee obtained without personal service on the debtor must be recognized by courts of another state as a defense in a suit

[73] Porter v. Wilson, (1915) 239 U. S. 170.

[74] Chesapeake & R. R. Co. v. Carnahan, (1916) 241 U. S. 241. See 3 *Virginia Law Review* 312, and 4 *Virginia Law Review* 69.

[75] Minneapolis & St. L. R. Co. v. Bombolis (1916) 241 U. S. 211. See 83 *Central Law Journal* 21, and 15 *Michigan Law Review* 166.

[76] Louisville & N. R. Co. v. Stewart, (1916) 241 U. S. 261; Chesapeake & O. R. Co. v. Kelly, (1916) 241 U. S. 485; and Chesapeake & O. R. Co. v. Gainey, (1916) 241 U. S. 494.

[77] St. Louis & S. F. R. Co. v. Brown, (1916) 241 U. S. 223.

[78] (1916) 240 U. S. 620.

by the debtor against the garnishee. The claim against the debtor in this case was based on a previous judgment rendered against him, so that the question of his indebtedness had been determined against him prior to the garnishment proceedings. This is doubtless the reason why the court did not consider whether the garnishee had lost his defense by failure to give reasonable notice to the debtor of the pendency of the proceedings, since the facts in the case appear to give warrant for making such a claim. But in Wells Fargo & Co. v. Ford,[79] such neglect on the part of a carrier to give seasonable notice to a consignor of the pendency of a replevin suit brought against it was held to justify the court of a sister state in declining to recognize the judgment in replevin against the carrier as a defense to a subsequent action brought against it by the consignor for the value of the goods consigned and replevied. The principle is obviously applicable in garnishment proceedings.

Another limitation to the effect which must be given to a judgment of a sister state founded only on service on a garnishee was declared in New York Life Ins. Co. v. Dunleavy.[80] Mrs. Dunleavy and one Gould were rival claimants to the surrender value of an insurance policy claimed by the former as assignee of the latter. A judgment creditor of Mrs. Dunleavy brought garnishment proceedings against her in Pennsylvania, serving both Gould and the insurance company as garnishees. The company acknowledged its indebtedness, paid the money into court and asked the court to determine whether the fund belonged to Gould or to Mrs. Dunleavy. The jury found that there had been no valid assignment, and the fund was paid over to Gould. Later Mrs. Dunleavy brought action in California for the policy and got judgment, which the Supreme Court sustained, holding that she was not bound by the Pennsylvania decision against the validity of her assignment, because she was not served with process in the action. The garnishment proceedings, it was said, gave the court jurisdiction to order the garnishee to pay

[79] (1915) 238 U. S. 503. See 81 *Central Law Journal* 146.

[80] (1916) 241 U. S. 518. See 83 *Central Law Journal* 20, and 30 *Harvard Law Review* 86.

to the creditor any sums found to be due from the garnishee to the debtor, but not to determine conclusively that the debtor had no valid claim against the garnishee. And the interpleader brought by the insurance company was declared to be collateral both to the garnishment proceedings and to the original action in which judgment against Mrs. Dunleavy was obtained. The result was that the insurance company paid twice and had no relief, because the parties could not all be brought before the same court, and one jury sustained the assignment, and the other declared it invalid.

A similar untoward result was sanctioned in Spokane & I. E. R. Co. v. Whitley[81] in which a railroad company unsuccessfully plead a Washington judgment in favor of a widow to defeat an Idaho action by the mother of the deceased. The statute of Idaho, where the deceased was killed, gave an action in favor of "the heirs." Under Idaho law the widow and the mother were joint heirs. The mother was not a party to the action brought in Washington by the widow, and the Supreme Court held that her rights were not affected thereby, even though the defendant had paid the judgment. So it paid the widow the full amount which should have been divided between her and her mother-in-law, and then had to pay again the share of the mother. The court thought that the road might have saved itself by insisting in the Washington suit that the widow present proof that the mother consented to be represented by her. In the absence of such proof the widow could have recovered only her moiety, unless the court should decline to recognize the applicability of the statute of distributions of the state in which the death occurred. In the particular case the road had evidently connived with the widow and was regarded by the Supreme Court as to blame for the predicament in which it eventually found itself.

Baker v. Baker Eccles & Co.[82] presents another dispute between a widow and her mother-in-law, in which contrary results were reached by courts of different states. In proceedings

[81] (1915) 237 U. S. 487. See 3 *California Law Review* 489.

[82] (1917) 242 U. S. 394. See 30 *Harvard Law Review* 486. 2 *Southern Law Quarterly* 230, and 26 *Yale Law Journal* 403.

brought in Tennessee by the widow it was held that the deceased died domiciled in Tennessee and that the widow was entitled to all the personalty, including certain stock in a Kentucky corporation. But the Kentucky court in proceedings brought by the mother found that the deceased died domiciled in Kentucky and gave the mother half of the Kentucky assets in accordance with the Kentucky statute of distribution. From this judgment the widow prosecuted a writ of error to the Supreme Court, alleging that it denied full faith and credit to the Tennessee proceedings. But the court held that the Tennessee court could not bind the mother personally in proceedings to which she was not a party, and that the judgment of one state that a decedent was domiciled there need not be regarded in another state when the party whose rights were in issue in the former proceeding was not personally served, and the second state decided that the first state incorrectly determined the disputed question of domicile. Each state where there are assets can determine the question of domicile for itself unless the parties have previously joined in submitting the question elsewhere.

The power of each state to control the disposition of realty within its borders was brought out in Hood v. McGehee[83] which sustained an Alabama judgment declining to recognize children adopted by the intestate in Louisiana as entitled as heirs to Alabama realty, although they were regarded as heirs by Louisiana. Alabama was said to be "the sole mistress of the devolution of Alabama land by descent" and not required to look to the law of the owner's domicile to determine who were his heirs.

Though in Kryger v. Wilson[84] the court reiterated its frequently declared doctrine that whether an element of a contract is governed by the law of one state or of another is a question of local doctrine of conflict of laws, of which the United States Supreme Court will not take cognizance on a writ of error, nevertheless in two other decisions it indicated a significant and salutary qualification of the doctrine. Hartford Life Ins. Co. v.

[83] (1915) 237 U. S. 611. See 51 *National Corporation Reporter* 50.

[84] (1916) 242 U. S. 171. See 17 *Columbia Law Review* 441, and 26 *Yale Law Journal* 405. For comment on the decision in the state court, see 1 *Iowa Law Bulletin* 92.

Ibbs[85] reversed the judgment of a Minnesota court because it failed to determine the right of a member of a Connecticut insurance company operating under the mutual assessment plan, in accordance with a judgment rendered by a Connecticut court on the powers of the company in a proceeding in which the Minnesota insured was not a party. The case probably goes no further than to declare that all members were privies to that judgment, and to sustain the right of some members to bring suit in the state where the company is chartered and has its main office, a "class suit" which shall bind all the members to a judgment on the powers of the corporation.

But Royal Arcanum v. Green,[86] decided the same day, certainly means to go further. It reversed the judgment of a New York court because it determined the rights of a member of a Massachusetts fraternal association by the New York law rather than by the Massachusetts law. There was here also a previous judgment in the Massachusetts court between other parties, but the court said that its conclusion did not require it to decide whether that judgment was binding on the parties to the New York suit. It spoke, however, of the duty of the New York court "to give effect to the judgment in such case" as "being substantially the same as the duty to enforce the judgment." But this was adduced as an additional ground for the decision, the main ground being referred to as follows: "The controlling effect of the law of Massachusetts being thus established, and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined. . . . ."

This would lead to the inference that the court means to declare the doctrine that the full faith and credit clause requires each state to apply the law of the state of incorporation in deciding issues with respect to the powers of a fraternal association over its members. Yet the court might later insist that the general language of the opinion should not be applied to a case

[85] (1915) 237 U. S. 662.

[86] (1915) 237 U. S. 531. See 81 *Central Law Journal* 74, 82 *Central Law Journal* 8, 29 *Harvard Law Review* 98, and 25 *Yale Law Journal* 324.

where the element of a judgment of the home state in favor of the particular corporation was lacking. And the court may refuse to extend the doctrine to issues respecting the relations *inter sese* of an ordinary corporation and its stockholders. But the expansion of the doctrine, though it would greatly increase the work of the Supreme Court, might go far towards ending the evil of contradictory adjudications in different states of identical questions, whose determination in each state affects directly or indirectly the litigants in other states. It ought to be made impossible for identical issues between different stockholders of the same corporation to be settled in different ways by the courts of different states.

IX. MISCELLANEOUS

The power of Congress to punish for contempt received consideration in Marshall v. Gordon.[87] The actual decision was that the publication by a federal district attorney of a letter written by himself containing matter defamatory to the house of representatives or one of its committees does not constitute such an obstruction to the discharge of the legislative duties of the house as to bring a proceeding by the house to punish the offender for contempt within the power to take action necessary and proper to carry into effect the powers expressly granted. The abstractions and generalities of the opinion of the Chief Justice make it difficult to present tersely the important implications of the decision. It is made clear, however, that Congress does not have the mixed legislative and judicial powers of the British house of commons, that its implied powers to punish for contempt are strictly ancillary to its express powers, that this power cannot be exercised to impose punishment, but only to prevent, by direct action or by example, acts which obstruct its exercise of its powers, and that imprisonment for contempt cannot extend beyond the session during which the contempt occurred.

[87] (1917) 243 U. S. 521. See 15 *Michigan Law Review* 593. For comment on the decision in the court below, see 30 *Harvard Law Review* 384.

Other powers exercised by Congress were sanctioned in a number of cases. Utah Power & L. Co. v. United States[88] held that the laws of a state have no bearing upon a controversy over the right to use public lands of the United States located within a state, and that Congress has power to control their use and disposition "even though this may involve the exercise in some measure of what is known as the police power." Lamar v. United States[89] declined to countenance the far-fetched contention that the assignment of a judge of one federal district to duty in another, pursuant to the Judicial Code, was a legislative usurpation of the appointing powers of the President. McKenzie v. Hare[90] sustained the power of Congress to provide that a female citizen who marries an alien thereby loses her citizenship, and construed the statute to apply to those who marry aliens resident in this country. And First National Bank v. Fellows[91] held that the "necessary and proper" clause gave Congress power to authorize national banks to act as trustee, executor, etc., when this contravened no state law, and that it was not an improper delegation of legislative power to vest in the federal reserve board authority to grant permits to national banks so to act.

Mention has already been made of a number of decisions in which the powers of administrative bodies were passed upon. To these must be added four others.[92] Title Guaranty & S. Co. v. Idaho[93] held that a state may clothe its bank commissioner

[88] (1917) 243 U. S. 389.

[89] (1916) 241 U. S. 103.

[90] (1915) 239 U. S. 299. See 22 *Case and Comment* 779, 20 *Law Notes* 146, 14 *Michigan Law Review* 233, and 1 *Virginia Law Register*, n. s. 865.

[91] (1917) 244 U. S. 416. See 85 *Central Law Journal* 131, 31 *Harvard Law Review* 308, 25 *Journal of Political Economy* 746, 2 *Minnesota Law Review* 55, and 63 *Ohio Law Bulletin* 6.

[92] Mention should be made also of South Carolina v. McMaster, (1915) 237 U. S. 63, which sustained the action of the South Carolina insurance commissioner in refusing to grant a license permitting a foreign insurance company to do business within the state, unless it invested one-fourth of the required reserve on policies issued in South Carolina, in approved South Carolina securities.

For another case sustaining requirements imposed on a foreign corporation as a condition of doing business within the state, see Mallinckrodt Chemical Works v. Missouri, (1915) 238 U. S. 41.

[93] (1916) 240 U. S. 136.

with power to close the doors of a state bank, if upon examination it is found to be insolvent, without awaiting judicial proceedings. The case did not involve the question whether an administrative officer could be given authority to liquidate the affairs of a bank without resort to judicial proceedings. Pacific Live Stock Co. v. Lewis[94] sustained the requirement that landowners claiming rights in a stream must forfeit their claim unless they litigate it before the state water board and pay a fee of fifteen cents an acre for the first 100 acres, with diminishing rates for the rest. The fee was found not excessive, and the fact that the determination of the water board was not final was held immaterial in view of the fact that it was an integral part of the entire proceedings and that the claimant is not prevented "from receiving the full benefit of submitting his claim and supporting proof to the board."

Two cases involved the sufficiency of the hearing before an administrative board. An absence of any hearing prior to an order to resume service on a branch line of a railroad was held not a denial of due process where a suitable indemnity bond from the persons desiring the service was required for the protection of the road in case the administrative order should be vacated in a court of equity.[95] And Louisville & N. R. Co. v. Finn[96] sustained the administrative procedure provided by Kentucky for proceedings to recover charges in excess of rates found to be reasonable, although it was less formal than strict judicial procedure. There was no formal issue and no method of requiring the production of evidence. But the court found that the appellant was permitted to raise such issues and introduce such evidence as it desired, and that there was nothing to show that it suffered from lack of compulsory process against witnesses. Whether a different showing on this point would have produced a different result is not stated.

[94] (1916) 241 U. S. 440.
[95] Detroit & M. R. Co. v. Michigan R. Com., (1916) 240 U. S. 564.
[96] (1915) 235 U. S. 601.

LEGISLATIVE NOTES AND REVIEWS

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Congressional Legislation.—SPECIAL SESSION, 1917. The special session of the 65th Congress began on April 2, and adjourned on October 6, 1917, and was concerned largely with war legislation. All told, 107 acts and joint resolutions were passed. Of these, 60 were concerned directly or indirectly with war work; 19 were of a public nature not directly connected with the war; and 34 were private acts.

Declaration of War. The joint resolution declaring the existence of a state of war between the United States and the imperial German government was adopted on April 6, and authorized the President to use the entire naval, military and economic resources of the United States to bring the war to a successful termination.

Appropriations. The war appropriations were unprecedentedly huge and were embraced in 7 separate acts. The deficiency appropriation acts set aside $250,000 to be expended at the discretion of the President for the relief, protection and transportation of American citizens who were in Europe at the outbreak of the war; $100,000,000 for the national security and defense, available throughout the year 1917; and additional specific appropriations for the maintenance of certain departments of the government on account of war expenses, including the purchase of shipping plants and the construction of ships and provisions for the acceptance and promotion of vocational education. The army appropriation act provided liberal appropriations for the federal military establishment and maintenance of rifle ranges for civilian instruction for civilian military training, for the council of national defense and the reserve officers' training corps. The urgency deficiency appropriations for the army and navy were designed to afford funds to finance the army and navy in its various branches, to carry on the work of the council of national defense and the shipping board, to provide civilian military training, to construct fortifications and to guarantee the custody of alien enemies. The sundry civil appropriations act, in addition to providing funds for public buildings, armories

and arsenals, set aside appropriations for the shipping board and the immigration and naturalization service. Separate appropriations were made for the United States military academy. The total amount appropriated at this session was $18,879,000,000.

Liberty Loans. The first liberty loan was authorized by the act of April 24, 1917, aggregating $5,000,000,000, of 3 1–2 per cent bonds, convertible into a higher rate of any subsequent issue, and exempt from all national or local taxes except estate or inheritance taxes. The secretary of the treasury was authorized to loan the allied governments $3,000,000,000. The second liberty loan was authorized by the act of September 24, 1917, providing for $7,538,945,460, of 4 per cent bonds, convertible into a higher rate of subsequent issue. The secretary of the treasury was authorized to loan the allied governments $4,000,000,000.

War Taxes. The elaborate act of October 3 provides for the raising of revenue to defray the war expenses. This act imposes a tax on incomes, war excess profits, beverages, cigars and tobacco, facilities furnished by public utilities, insurance, admissions, bonds, capital stock issues, sales or transfers, sales on exchange, drafts and promissory notes, deeds, entries, passage tickets, playing cards, postage and parcel post. Some of these taxes are new, others are merely adjustments by the raising of rates. The existing administrative machinery for the most part is used in effecting collections.

Navy. In order to increase the efficiency and the personnel of the navy, several important changes in the naval organization were instituted. The secretary of the navy was authorized to assign any member of the fleet naval reserve to active duty for training on board ship or elsewhere, and to detail such naval officers as might be necessary to the hydrographic office during the war. Minority enlistments in the navy or marine corps were extended to a term of 4 years; the maximum age limit of officers of the naval reserve and the naval reserve force, on first appointment, was increased from 35 to 50 years; and during the period from April 25, 1917, to September 1, 1918, each senator, representative and delegate in Congress is authorized to appoint one additional midshipman. Provision was made for the enlistment of the citizens or subjects of friendly alien countries by permitting such persons to enlist upon declaring their intentions of becoming citizens of the United States, and providing that any such person upon the completion of not less than one year of honorable naval service and proof of good moral character and the production of a certificate

from the secretary of the navy, may become a citizen of the United States without further residence or requirement. By the act of May 22, 1917, the enlisted strength of the active list of the navy was temporarily increased from 87,000 to 150,000, and the enlisted strength of the active list of the marine corps from 17,400 to 30,000. To insure against the loss of property incident to the hazards of war, the paymaster general of the navy is authorized to reimburse such officers, enlisted men and others in the naval service who may suffer loss, destruction or damage to personal property due to the operations of war, shipwreck or other marine disaster. Provision was made by the acts of October 6, for the payment of a six months' gratuity to the widow, children, or other designated dependent relative of any officer or enlisted man serving on active duty during the continuance of the war; the officers of auxiliary naval forces were authorized to serve on naval courts; the commutation price of the navy ration was fixed at a maximum of 40 cents; and the rating and base pay of members of the artificer branch of the navy was readjusted.

Army. The detailed changes effected in the army organization were extensive. The selective service act, signed on May 18, provided for raising an army of 500,000 by selective draft of men between the ages of 21 and 31 years, and for further increments. This act also provided for local draft boards, district appeal boards and other machinery for the registration and selection of men for the army. By other acts, provision was made for the enlistment of the citizens or subjects of allied countries in the army, under such rules and regulations as the secretary of war may prescribe; the erection of temporary war buildings on the grounds of the Smithsonian Institution at Washington; the issuance of small arms and equipment to the companies of home guards in the states and territories and the District of Columbia; the condemnation of lands for fortifications, coast defenses, military training camps and other military purposes; the appointment of additional lower grade officers in the officers' reserve and national guard staff corps, and not to exceed 12 chaplains at large; the use of cavalry temporarily as field artillery; and the fixing and assignment of pensions to members of the public health service, their widows and children, when serving on coast guard vessels or in the army or navy. Any officer or soldier of the United States army in overseas service may make allotments of his pay for the support of his wife, children or other dependent relatives, under such regulations as the secretary of war may prescribe. Provision was made for the organization of the dental

corps of the army on the same basis as the medical corps, for one dental officer for each 1,000 men of the total strength of the regular army, and for keeping dental students in college on the same basis as medical students.

Aviation. During the continuance of the war, the President is authorized to increase the enlisted strength of the signal corps and aviation section of the army; to provide for the organization and personnel of both branches; to acquire and equip aviation fields; develop aeroplanes and engines; and provide for the vocational training of the enlisted men; and by the act of October 1, an aircraft board was created to expand and coördinate the work of building aeroplanes.

Alien Enemy Vessels. On April 6, when war was declared, there was a large number of vessels belonging to Germany and Austria which had been interned in United States ports during our period of neutrality. By the act of May 12, the President was authorized to take possession of all these vessels, except those interned in the ports of the Virgin Islands, and turn them over to the United States shipping board to be equipped for service. The value of these vessels is fixed by a board of survey appointed by the secretary of the navy.

War Risk Insurance. The war risk insurance act of September 2, 1914, was amended (June 12) to provide for the reinsurance of American vessels with the allied governments and the reinsurance of allied vessels with the American government; and the insurance of the masters, officers and crews of vessels privately owned and carrying on trade in the interests of the United States. Additional extensive amendments were made by act of October 6, providing for a general system of military and naval family allowances, compensations and insurance, and creating a division of marine and seaman's insurance and a division of military and naval insurance.

Crimes Against the Government. The existence of a state of war renders it imperative that the government define or re-define acts and practices which are inimical to the best interests of the country in the successful prosecution of the war. The espionage act prohibits the gathering of information to be disclosed to the enemy, at places connected with the national defense, such as dockyards, arsenals and munition plants; and the disclosing of plans of defense or the disposition of armed forces to the enemy. The secretary of the treasury may promulgate rules and regulations governing the anchorage and movement of foreign or domestic vessels in the territorial waters of the United States; violation of the rules entails forfeiture of the vessel,

fine and imprisonment. Setting fire to any vessel of American or foreign registry, tampering with the motive power, or placing bombs or explosives on board, or destroying or interfering with commodities designed for export subjects the offender to a fine of $10,000 and imprisonment for ten years. It is likewise unlawful to export any article which may be prohibited in any proclamation issued by the President; or to interfere in any way with the orderly movement of trains or other carriers. To facilitate the movement of government supplies, the President is authorized to give preference or priority in transportation to shipments which are essential to the national security and defense. The shipping board is authorized to permit vessels of foreign registry and foreign built vessels admitted to American registry to engage in coastwise trade during the war.

Mining, Homestead and Desert Land Claims. The provisions of the laws relative to residence, improvements and assessments in establishing claims to mining, homestead and desert land entries on government lands are suspended during the continuance of the war in the cases of persons who are enlisted in some branch of the military or naval service. The necessary affidavits required of entrymen may be taken before the military commander of any such person engaged in military service.

Agriculture and Food Products. For the purpose of stimulating agriculture, increasing and conserving the food supply and facilitating its distribution, the secretary of agriculture is authorized to assemble information relative to the demand, production and distribution of agricultural food products; to furnish seed at cost; to provide for the eradication of disease, the dissemination of market news, and the demonstration of food conservation and preparation methods. The President is authorized to establish such agencies as will secure an adequate and equitable supply of food at reasonable prices, and without conspiracies or combinations.

Citizenship. Any citizen of the United States who has expatriated himself to enter the armed forces of any of the allies of the United States, may, on presentation of an honorable discharge, be repatriated, if abroad, by applying to any consular officer of the United States, and if at home, by applying to any court authorized by law to confer citizenship on aliens, and taking the oath of allegiance, and, without lapse of time or other formality, may have full citizenship conferred on him.

Explosives. During the continuance of the war, it is unlawful to manufacture, distribute, store, use or possess powder, explosives,

blasting supplies or the ingredients thereof, unless licensed to do so, and in compliance with such requirements demanded by a state of war, as may be imposed.

Patents. When the commissioner of patents thinks that the publication of an invention by the granting of a patent may be detrimental to the interests of the country, he may order that the patent be kept secret, and withhold the granting of the patent until the termination of the war.

Trading with the Enemy. The trading with the enemy act is designed to suspend and discontinue any and all commerce with the enemy or his allies, and prohibits the sending or transporting of merchandise, persons, letters or other written messages to the enemy or any enemy ally without license from the President, or the conducting of any and all kinds of business which are deemed inimical to the United States or helpful to the enemy.

Red Cross. The American Red Cross was authorized to erect a temporary building in Washington for its use in carrying on auxiliary war work.

Non-War Acts of Public Nature. Approximately 19 acts of public nature were passed dealing with questions not essentially connected with the war. These measures include the congressional appropriation act; certain provisions relating to the distribution and interchange of cars to facilitate the transportation of interstate commodities; the installation of a pneumatic mail-tube service in Washington; amendments to the federal reserve bank system; continuance of the temporary permits for the diversion of water power from above Niagara Falls; modifications in the designs of the current quarter dollars; appropriations for congressional session employees; rivers and harbors appropriations; enlargement of the membership and change in procedure of the interstate commerce commission; construction of additional buildings for the treasury department; prescribing the denominations of circulating notes of national banks and authorizing the issuance of notes of small denominations; extending the workmen's compensation law provisions in admiralty and maritime causes; authorizing the secretary of the treasury to permit the entry of distilled liquors shipped from any foreign country prior to September 1, 1917, into bonded warehouses of the United States, conditioned for the export of such goods to some foreign country within the period of one year from the date of entry; and authorizing the secretary of the interior to issue permits, good for a period of two years, granting the

exclusive right to prospect on public lands for chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium.

Private Acts. Thirty-four acts, essentially private in their nature, were passed dealing with: the Independent Order of Odd Fellows in the District of Columbia; authorizing the construction of bridges, locks and dams in and across navigable rivers; the improvement of harbors; the conveyance of lands; establishing ports of entry; increasing the cost limit of certain public buildings; the donation of cannon; and authorizing the secretary of the interior to expend public money in the promotion of drainage in the Rio Grande reclamation project.

SECOND SESSION, 1917–18. The regular session of Congress opened December 3, 1917 and continued into November, 1918. Up to the end of August, 120 public acts and 23 public resolutions had been passed.

On December 7, a joint resolution was passed declaring war on Austria-Hungary.

Economic Measures. The daylight saving act, which became law March 19, 1918, provided for advancing the time by one hour from April to October 25. The railroad control act, signed March 21, provided for the control and direction of railroads and transportation facilities by the national government, confirming the action of the President in taking control of the railroads at the end of December. On April 5, a bill became law, creating the war finance corporation, capitalized at $50,000,000, to provide credits for industries and enterprises necessary or contributory to the prosecution of the war, and to supervise the issue of securities.

The civil rights act for soldiers and sailors (March 8) and the Overman act (May 20), authorizing the President to consolidate and reorganize executive departments, bureaus and agencies, have already been noted in this REVIEW. Another act affecting administrative organizations was that of August 6, authorizing two additional assistant secretaries of war. An act of June 27 provided for the rehabilitation of disabled soldiers.

Sabotage and Espionage. On April 20, a sabotage act was approved, providing heavy fines and imprisonment for the destruction of war materials or obstructing the United States or any associate nation in the prosecution of the war. An act amending the espionage law was signed May 16, providing penalties for seditious utterances or for publishing disloyal statements with intent to cripple or hinder the prosecution of the war.

Selective Service. A joint resolution was approved on May 20, providing for the registration and drafting of men reaching the ages of 21 since June 5, 1917. A sweeping extension of the selective service act became law on August 31, providing for the registration of all men between the ages of 18 and 21 years and between 31 and 45 years, inclusive, and for their call to military service.

Financial Measures. Important appropriation acts were the sundry civil act for $3,000,000,000, the naval appropriation of $1,609,000,000, the fortifications bill of $2,814,000,000, and the army appropriation act of $12,000,000,000. The total appropriations and authorizations for contracts to the end of August amounted to $29,791,000,000; and an additional estimate presented in September for the enlarged military program called for $7,350,000,000 more.

An act authorizing the third issue of Liberty bonds was approved April 5; and on July 9, an act for the fourth issue was signed, authorizing additional bonds for $8,000,000,000 and $1,500,000,000 more for loans to associated nations, at not more than 4½ per cent, making a total of $22,000,000,000 authorized for bond issues.

The war revenue bill, introduced in September, provided for drastic increases in tax rates and new taxes, estimated to yield a total tax revenue of $8,000,000,000 for the year.

State Administration of Vocational Education. Since the enactment of the Smith-Hughes Act by Congress in February 1917, providing for aid from the national government to the states in promoting vocational education, forty states, by legislative act, have accepted the provisions of this law and pledged themselves to its administration. The Michigan[1] law stipulates, however, that all provisions of the act shall apply only until the next meeting of the state legislature.

Twenty-five states[2] in accepting the Smith-Hughes law authorize the state board of education, or a corresponding agency, to work out the plans of administration. Colorado[3] vested the authority in the state board of agriculture, pending a constitutional amendment which would provide for an appointive board of education. The legislature

[1] Acts 1917, p. 377.

[2] Arizona, Arkansas, California, Connecticut, Delaware, Florida, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, West Virginia and Wyoming.

[3] Acts 1917, p. 536.

of New York[4] designated the regents of the University of New York as the administrative agents. In authorizing the state board of education to coöperate with the federal government in administering the law, the acts of Connecticut,[5] Florida,[6] and Missouri[7] stipulate the schools in which vocational teachers shall be trained and vocational subjects taught. The Missouri law also requires the president of the state board of education to appoint an advisory committee of five members, representing the interests of agriculture, employers, labor, home economics and commerce.

Thirteen states (Georgia,[8] Iowa,[9] Kentucky,[10] Maine,[11] Michigan,[12] Mississippi,[13] Nebraska,[14] New Hampshire,[15] North Carolina,[16] Ohio,[17] Oklahoma,[18] South Dakota,[19] and Missouri[20]) have created special boards of vocational education. The boards of Iowa, Michigan, Nebraska and North Carolina are entirely ex officio. In Nebraska it is made up of three members, the governor is chairman, the state treasurer is treasurer of the vocational board, and the state superintendent is secretary. Of the Kentucky board of seven members, five are ex officio and two are appointed by the governor, one a superintendent of schools and the other a person engaged in farming or business. The Mississippi board is made up of the acting supervisors of rural schools for white children, the acting supervisor of negro rural schools and one citizen appointed by the governor. The state superintendent is chairman ex officio of the Oklahoma board of five members, four are ex officio and one is a citizen appointed by the governor to act as its secretary. The South Dakota board of seven has three members ex officio and four appointed by the governor, two of whom are members of the faculty of the state normal school, one a superintendent or principal of town or city schools and one a county superintendent. In Maine the state superintendent is chairman ex officio and the other two members are appointed by the governor.

In Georgia, Ohio and Missouri industrial interests are especially insured representation on the newly created board by statute. The

[4] Acts 1917, p. 1280.
[5] Acts 1917, p. 2552.
[6] Acts 1917, p. 236.
[7] Acts 1917, p. 513.
[8] Acts 1917, p. 200.
[9] Acts 1917, p. 236.
[10] Acts 1918, p. 19.
[11] Acts 1917, p. 179.
[12] Acts 1917, p. 377.
[13] Acts Special Session 1917, p. 22.
[14] Acts 1917, p. 559.
[15] Acts 1917, p. 24.
[16] Acts 1917, p. 139.
[17] Acts 1917, p. 579.
[18] Acts 1917, p. 245.
[19] Acts 1917, p. 308.
[20] Acts 1917, p. 814.

Georgia board of seven members has two members ex officio, three members are appointed by the governor from the state at large, one a representative of manufacturing interests, one of agriculture and one of labor. Ohio provides for a board of six members, all appointed by the governor, not more than three of the six to be of the same political party and all must be persons of recognized standing in business, the professions or industry. The state superintendent of public instruction is a member ex officio and acts as the secretary of the board. Wisconsin provides for a board of nine members, all appointed by the governor. There are three employers of labor, three skilled employees who have not had employing and discharging power, and three practical farmers. The state superintendent and a member of the industrial commission are members ex officio.

A clause in the national appropriation act of October 1, 1917, provided that in event the legislature of 1917 failed to accept the provisions of the law and took no adverse action, the governor should be empowered to accept and provide means for administration, pending the meeting of the next legislature. Pursuant to this, the governors of Alabama, Idaho, Illinois, Louisiana,[21] Oregon and Virginia temporarily accepted the act and provided for carrying out its provisions.

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Exceptional State Laws. *Americanization.* The legislature of Arizona in the special session of 1918 recognized the need for measures which would encourage the Americanization of aliens. Provision was made that in any school district where fifteen or more persons reside who are unable to read, write or speak English and who wish to attend night school, the board of trustees should establish such a school in which should be taught the "English language, American ideals and an understanding of American institutions."[1] An appropriation is also made for the use of the state council of defense to make a survey of the state as to the needs of Americanization of aliens. The Nevada legislature made it the duty of all school officers to provide instruction which should inculcate a love of country and a disposition

[21] The General Assembly of Louisiana in 1916 anticipated the passage of the Smith-Hughes Act and by Act of July 6, 1916, authorized the governor to accept it in event of its passage. Information as to the situation in Rhode Island and North Carolina is not available.

[1] Acts, Special Session 1918, p. 28.

to serve the country effectively.[2] Minnesota[3] required that patriotism be taught in all schools, and New Jersey[4] made an appropriation for additional instruction for aliens. Wisconsin attempts to stamp out illiteracy by prohibiting the employment of any illiterate minor over seventeen years of age in any school district where a public evening school or vocational school is maintained unless the minor attends the school at least four hours per week.[5] It is significant that illiteracy is defined as inability to read at sight and write legibly sentences in English.

Public Instruction. Idaho[6] submitted to the people at the next election the question of abolishing the office of superintendent of public instruction. The same legislature authorized the state board of education to draw up a uniform course of study so that the fundamentals of the course may be covered in the minimum legal school term of seven months. Supplementary matter must be supplied for schools having longer terms, but if a pupil takes the shorter term, he receives an equivalent amount of credit for work done in the home, on the farm and in other practical phases of life.[7] South Dakota authorized the governor to appoint a commission of three, which shall in turn employ an expert nominated by the United States bureau of education to make a survey of the educational system of the state and to report to the governor by July 1, 1918.[8]

Involuntary Labor. Following the enactment of statutes in 1917 by Maryland[9] and West Virginia[10] requiring all able-bodied men to be regularly employed for the period of the war, New Jersey,[11] Kentucky,[12] New York[13] and Massachusetts[14] enacted similar statutes in 1918. The acts of Maryland, New Jersey, New York and Massachusetts include men between the ages 18 and 50; West Virginia and Kentucky include all between 16 and 60. All those not regularly employed in Maryland must register with the clerk of the circuit court. In New Jersey an idler must report to the commissioner of labor. In New York one must be able to give proof of regular employment at any time he is questioned by a local officer. Massachusetts requires the unemployed to register with the director of the bureau of statistics.

[2] Acts 1917, p. 245.
[3] Acts 1917, p. 135.
[4] Acts 1917, p. 883.
[5] Acts, Special Session 1918, p. 5.
[6] Acts 1917, p. 507.
[7] Acts 1917, p. 436.
[8] Acts 1917, p. 307.
[9] Acts, Special Sesson 1917, p. 80.
[10] Acts, Second Extra Session 1917, p. 51.
[11] Acts 1918, Chap. 55.
[12] Acts 1918, p. 698.
[13] Senate Bill No. 951.
[14] Acts 1918, p. 363.

West Virginia and Kentucky proceed as for vagrancy and those convicted are required to labor on public works. In no case is sufficient property for support an excuse for nonemployment, but in all the laws especial provision is made for exemption of students during the school term.

Miscellaneous Laws. Arizona[15] forbids the employment of or the giving of aid to anyone who is a deserter or a slacker from military service. The state also attempts to assist in enforcing the selective service laws of the United States by making it a felony, punishable by imprisonment for not less than one year, to sign a false affidavit in the matter of securing deferred classification.[16] Massachusetts legalizes Sunday gardening for the period of the war.[17] Minnesota[18] prohibits aliens from owning or possessing fire arms. The Vermont[19] legislature has empowered the commissioner of industries, with the approval of the governor, to suspend the operation of all laws relating to the employment of women and children while the United States is at war. New York[20] will remove from office any public official, including teachers, for seditious words or acts. North Carolina[21] has prohibited the use of aeroplanes in hunting wild ducks and swans.

Idaho,[22] Minnesota[23] and South Dakota[24] statutes prohibits and define criminal syndicalism, as the doctrine which advocates sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial reform. In Idaho it is specifically forbidden to place or insert rocks or metallic substance in saw logs.[25] Illinois,[26] Maine,[27] Maryland,[28] Rhode Island[29] and Vermont[30] have enacted laws for the protection of property necessary to the successful prosecution of the war.

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Special Municipal Corporations. Thirty years ago the term "municipal corporation" would have been taken to signify cities, towns and villages, and possibly counties, townships and school districts,

[15] Acts, Special Session 1918, p. 6.
[16] Acts, Special Session 1918, p. 28.
[17] Acts 1917, p. 190.
[18] Acts 1917, p. 840.
[19] Acts 1917, p. 192.
[20] Acts 1917, p. 1280.
[21] Acts 1917, p. 139.
[22] Acts 1917, p. 459.
[23] Acts 1917, p. 311.
[24] Acts, Extra Session 1918, ch. 38.
[25] Acts 1917, p. 446.
[26] Acts 1917, p. 351.
[27] Acts 1917, p. 96.
[28] Acts 1917, p. 22.
[29] Acts 1917, p. 41.
[30] Acts 1917, p. 255.

though the quasi-corporate character of the last three was much in controversy. Today the complete significance of the term as it appears with increasing frequency in the statutes of the various states, cannot be adequately appreciated unless there is taken into consideration over a score of "districts" which have steadily increased in numbers and diversity of purpose as the result of legislative action.

Such districts dealt with in the legislation of 1917 are: drainage districts in Florida, Michigan, Minnesota, Oregon, Washington, and West Virginia, and now existing in forty states; irrigation districts, in California, Colorado, Idaho, New Mexico, Oregon, South Dakota and Washington; flood control districts in Minnesota; diking and local improvement districts in Washington; port districts in Oregon and Washington; fire and lighting districts in Vermont; boulevard districts in California; reclamation districts in West Virginia; water improvement districts in Texas; metropolitan water districts in Nebraska; road improvement districts in Nebraska; water development districts and conservation districts in California; sanitary districts in Oregon and Indiana; park districts in Indiana; bridge districts in Arkansas; fire districts in New Hampshire and Connecticut; forest preserve district in Illinois; road districts in Illinois, Arkansas, Montana, Nevada, Kansas, Ohio and North Carolina; water storage districts in Nevada; water improvement districts in Texas; watch districts in Massachusetts; and school districts in many states.

In Connecticut districts may be established for any or all of the following purposes: to extinguish fires, sprinkle streets, light streets, establish building lines, plant and care for shade and ornamental trees, construct and maintain sidewalks, crosswalks, drains and sewers, to appoint and employ watchmen or police officers, and to collect garbage, ashes, and all other refuse matter in any portion of the district.

Amid the haze and maze of that twilight land—the legal concept of a municipal corporation—one fact now stands forth clearly: namely, that all these districts for special purposes are one in essential nature, regardless of the divergence of many of the individual districts from the standard type, and the designation "special municipal corporation" may be used to indicate every such district which is a public corporation, with definite territorial limits, formed for a single local purpose or for a few closely related purposes, autonomous, with power to elect its officials, determine boundaries, levy taxes, and issue bonds to carry out the corporate purpose.

There is to be noted in general in the legislation of 1917 a continued tendency to extend the powers and multiply the purposes of such districts, and a few evidences of a possible trend towards some central supervision. In the case of irrigation districts, the authority to develop and sell water power and electricity is becoming more common. In Oregon, for example, an irrigation district may furnish water for lands not included in the district, upon receiving proper compensation. The district may also furnish electric power in and out of the districts. In the latter case it is deemed a public utility within the state law. State supervision of finances is emphasized in the West Virginia law, requiring the approval of the attorney general before a bond issue can be made. The state highway commission, in California, upon petition of 25 per cent of the qualified voters of a boulevard district, may declare the office of a boulevard commissioner vacant and appoint his successor.

In the field of reclamation, drainage and irrigation, many states have revised or amended their law to permit such districts to contract with the federal government and take advantage of the federal reclamation act of 1916.

In the legislation of 1917, however, two cases stand out as worthy of special comment—those of Indianapolis, Indiana, and Portland, Oregon. The Indiana legislature provided for Indianapolis two new special municipal corporations, a park district and a sanitary district. As Indianapolis is also a school district, there will now be four distinct municipal corporations existing in virtually the same territory. The park district is to consist of the city and contiguous territory within 2000 feet of the corporate limits, and is to be formed on the petition of 200 taxpayers to the board of park commissioners of Indianapolis, but established only after a majority vote at an election. The district is a special taxing district for park, boulevard, parkway and playground purposes "and for such purposes . . . said park district shall be deemed a municipal corporation," with power to issue bonds. A particular provision of great significance reads: "Said bonds shall not in any respect be a corporate obligation or indebtedness of any municipality lying within the territorial limits of said park district, but shall be and constitute an indebtedness of said park district, as a special taxing district, and said bonds and interest thereon shall be payable only out of special taxes levied upon all the property of said district."[1]

[1] Gen. Laws, Indiana, 1917, ch. 140, p. 509.

A sanitary district is similarly created, although this district is definitely established by legislative act and no opportunity for a popular vote is given. Thus the territory of Indianapolis, already a civil city and a school city, is to become a park city and a sanitary city—four separate, legally distinct municipal corporations over what is for all practical purposes the same area, each municipal corporation, as such, empowered to issue bonds up to the constitutional debt limitation. These new municipal corporations will, of course, relieve the city in its civil capacity from the burden of park and sewage disposal improvements; or rather will permit the making of such improvements, impossible for the civil city whose constitutional debt limit has been reached. Incidentally, the legal stratagem of separate corporate existence will not diminish the burden upon the taxpayer.

It would seem pertinent to inquire to what extent such creation of a special municipal corporation for each urgent improvement can be continued. As city indebtedness or need increases, a "fire district" such as found in New England, would relieve the civil city of the burden of providing a fire department, as the school district has removed the burden of schools from the civil city. A "lighting district," common in New England towns, and a "metropolitan water district," as found in Nebraska, might be added. From a legal and constitutional standpoint there has as yet been no limit to the number of such corporations that may be created over any given area nor to the public purposes for which they may be established. The question is largely one of legislative discretion and good sense. Unfortunately in the past special municipal corporations have developed through patchwork legislation in which there was no conscious attempt to understand the nature of the district nor to foresee the possibilities in its development.

As an example of the extraordinary development of a special municipal corporation and its possibilities as a new and flexible agency in the development of a community, the port of Portland stands preëminent under the powers conferred in 1917. Organized in 1891 under act of 1890, this "port" was created to improve the Columbia River, and its territory consisted of the area about that river, including the city of Portland. To its original purpose, similar to that of river and navigation districts in other states, there was added in 1901 authority to provide a dry-dock, which was completed in 1903. In 1908 by popular vote the district took over the towage and pilotage service at an expense of $500,000, in coöperation with the national government, and in its biennial report for 1907–1908 the governing body of the

port could well say: "No other community in this country began so early or has gone so far in expenditure for river improvements as has Portland, nor has any public body in any city ever received more hearty and uniform support from the voters and taxpayers than has the port of Portland Commission throughout its existence." The extraordinary extension of powers granted by the legislature of 1917 gives evidence of the utility of this special municipal corporation and the popular confidence in it.

The port of Portland is a municipal corporation, so recognized by the courts as similar districts in the state of Washington have been, and so designated by the latest legislative act, the title to which reads: "To extend the powers of municipal corporations known as ports. . . ." While civil cities over the country are struggling, often unsuccessfully, to secure the right to own and operate markets and terminal facilities, the port of Portland has now been empowered not only to lease warehouses and terminal facilities and issue bills of lading and warehouse receipts, but also to engage generally in the business of transporting passengers and goods between Portland and any point in the world, and for that purpose to have offices or agencies anywhere in the United States or in foreign countries.

"The object, purpose and occupation of the said port of Portland," declares one of the three 1917 acts affecting the port, "shall be to promote the maritime shipping and commercial interests of the port of Portland . . ."[2] Another act grants power "to transport, for hire, passengers and mails, express company matter, goods, wares, merchandise, animals, and other property and materials of all kinds and nature whatever, and from any city or place within the territorial limits of the port as the home port or principal terminus, to, from, and between the various cities, towns, seaports, and river ports or landing places of the world . . . and to purchase, sell, own, charter, employ, operate and maintain steam, sailing, auxiliary vessels . . . and to lease or rent such buildings, warehouses, wharves, piers, quays, and basins . . . as may be necessary or advantageous for carrying on business within the United States . . . or in any foreign country."[3]

Two new purposes were added in 1917 to the list of those served by the special municipal corporation. Illinois, which has been unusually active in its use of special districts, has now provided for "public health

[2] Gen. Laws, Oregon, 1917, ch. 199.
[3] Gen. Laws, Oregon, 1917, ch. 296, sec. 1.

more adjacent towns in counties under township organization, or any road district or two or more road districts in counties not under township organization, or any town or towns in a county under township organization and an adjacent road district or districts in counties not under township organization, may be organized into a public health district. The purpose of the district is thus to permit an existing agency to take on new functions or to permit several existing agencies to combine for the new purpose. Township and road district boundaries are respected but county lines may be ignored. The district is formed on petition and a vote at regular elections. Officials of existing agencies, however, are to govern the district. In counties not under township organization the board of county commissioners constitutes the board of health or governing body for each district in the county. In single towns the township supervisor, assessor and town clerk constitute the board of health. Where towns or road districts combine there are representatives from each on the board. This is a tendency, which has been manifest before in the case of drainage districts in some states, to avoid the multiplication of officers and to centralize the control of the special district in the hands of the existing officers.

Among the powers conferred upon the board of health are: to levy an annual tax of not to exceed four mills; to appoint a public health officer from a list of eligibles supplied by the state department of health; to appoint nurses, chemists, experts and such clerks as the public health districts" in which there are several new features. Any town or two or officer recommends; to acquire and hold real estate and personal property; and to publish pamphlets. The public health officer is the executive of the board of health; enforces the rules of the state department of health; enforces all city, village and incorporated town ordinances relating to nuisances, public health and sanitation; investigates existence of contagious and infectious diseases, and arrests the progress of the same; and establishes dental clinics for school children.[4]

North Carolina passed an act to incorporate "rural communities," creating a special municipal corporation which, in the number of its purposes, approaches much more closely the municipal corporation proper—the city or village. The people of any community in North Carolina upon petition signed by a majority of the registered voters of such community, embracing in area one or more contiguous school districts, may be incorporated under the name of "The . . . Community of . . . County." A new departure in the procedure for

[4] Session Laws, Ill., 1917, p. 763.

organization is the provision that the petition shall be filed with the secretary of state who issues a certificate of incorporation. Most special municipal corporations in the past have been formed on a hearing before some local authority, usually the county court, and in most states there is little record in the secretary of state's office of the existence of these corporations. The registered voters of the community hold a public meeting, and a tax levy can be made only at the annual meeting. A board of three directors is elected by the meeting, and the meeting may adopt ordinances on the following subjects: the public roads of the community; public schools; public health; police protection; abatement of nuisances; care of paupers, aged or infirm persons; to encourage the coming of new settlers; regulation of vagrancy; aids to enforcement of state and national laws; collection of community taxes; establishment and support of public libraries, parks, halls, playgrounds, fairs and other agencies of recreation, education, health, music, arts and morals. A tax may be levied at an annual meeting if a majority of the qualified voters are present and vote in favor of it, or the question may be submitted to an election thirty days later. The board of directors may adopt standards for protection and marketing of produce, canned vegetables, etc., and may adopt labels, trademarks and brands and regulate their use. A state bureau of community service is given supervision over these "communities."[5]

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State House, Providence, R. I.

[5] Session Laws, N. C., 1917, ch. 128.

JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN
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Parole—Repeal Violates No Vested Right of Prisoner. Neal v. Hines (Kentucky, May 28, 1918, 203 S.W. 518). The plaintiff was convicted of murder in 1911 and sentenced to life imprisonment. Under the provisions of the Indeterminate Sentence Law of 1910 he had the right, after he had served 5 years of his term, to make application for a parole. In 1914 this law was amended so as to extend the time which must elapse before a prisoner sentenced for life became eligible to parole from 5 to 8 years. The plaintiff has served 5 years of his term and brings mandamus to compel the board of prison commissioners to parole him. He alleges that the new law cannot be applicable to him. The court denied the petition for mandamus on two grounds: First, a prisoner under the law has no vested right to a parole and a parole law may be amended or repealed entirely without violating any of his constitutional rights. A parole is given as an act of grace and not of right. Consequently the law of 1914 applies to the plaintiff and he is not eligible to parole until he has served 8 years of his term. Second, by the terms of the law the act of granting a parole is made discretionary and not mandatory and this discretion cannot be controlled by the issuance of a mandamus.

Police Power—Validity of Ordinance Against Falsely Labeling Meat "Kosher." People v. Atlas (New York, Appellate Division, May 31, 1918, 170 N. Y. Supp. 834). A New York statute of 1915 penalized the offense of selling or offering for sale any meat falsely marked with the word "kosher." "Kosher" meat is that which is prepared either by a rabbi or under his direction in such a manner as to comply with all the requirements of the orthodox Hebrew faith. The statute did not limit the sale of such meat to orthodox Jews but left the sale of it open to the general public. The purpose of the legislature was merely to prevent fraud. The court rejected the argument of unconstitutionality urged against the statute by the defendant in this case. In the first place the

act is not void because it does not define the offense created with sufficient definiteness. The legislature used the word "kosher" in the customary sense and defined it in the statute. Second, this is not class legislation merely because the persons chiefly interested in it are of the Hebrew faith. The benefits of the act are not confined to them. "Kosher" meat is prepared under conditions insuring a high degree of cleanliness and purity and the public at large should be able to rely upon the truthfulness of the label "kosher." Third, the act is not unduly oppressive upon dealers in meat inasmuch as the intention to defraud is an essential element of the offense. A mistake made in good faith could never constitute a violation of the statute.

A dissenting opinion was written by one justice who regarded the definition of the offense forbidden so indefinite and uncertain, so dependent upon technical features of the Hebrew code, as to be unconstitutional.

War Problems. *Alien Enemies—Rights During War—Conspiracy to Aid Escape.* DeLacey v. United States (U. S. Circuit Court of Appeals, May 6, 1918, 249 Fed. 625). In a prosecution for the crime of conspiring to aid the escape of alien enemies who had been interned by special order of the President, the constitutionality of the Alien Enemy Act of July 6, 1798, was attacked on the ground that it deprived persons thus interned of their liberty without due process of law. In disposing of this argument the court pointed out that at common law "alien enemies have no rights and no privileges, unless by special favor, during time of war" and that nothing in the Constitution of the United States in any way restricted the power of Congress to pass such a law. The power to enact such a law is necessary for the preservation of the government, and the right of every nation to exercise it is well established by international law. Since the confinement of alien enemies is a measure of national protection and not a punishment for crime it is unnecessary that judicial process be resorted to. It is entirely proper to exercise the power through the executive branch of the government alone.

Alien Enemy—Right to State Fishing License During War. State v. Darwin (Washington, May 10, 1918, 173 Pac. 29). Application was here made by a native of Austria-Hungary who had declared his intention to become a citizen of the United States for a writ of mandamus to compel the state fish commissioner to issue to him a license to fish in Puget Sound. The state statute provided for the issuance of such

licenses to persons who are eighteen years of age, citizens of the United States, or have declared their intention of becoming such, and have resided in the state for a period of one year. There was no doubt that the relator met all the qualifications thus set up. Did the fact that he was still the citizen of a nation with whom the United States is at war alter or diminish his rights under the statute? It is held that it did not. The proclamation issued by the President after the declaration of a state of war with Austria-Hungary displayed an attitude of friendship toward law-abiding subjects of that country living in the United States. It was specifically guaranteed to them therein that if they conducted themselves peacefully and in accordance with law they would be undisturbed in their lives, property and occupations. While the national government undoubtedly has the power to abridge the privileges and immunities of subjects of Austria-Hungary who have declared their intention of becoming American citizens, and might in effect suspend in respect to them the provisions of the state statute above mentioned by denying them the right to fish in any of the territorial waters of this country, the fact remains that it has not as yet done so. Until it does such persons are entitled to claim the full benefit of the statute as it stands.

Army and Navy Motor Vehicles—Applicability of Local Speed Regulations. State v. Burton (Rhode Island, June 19, 1918, 103 Atl. 962). The defendant was charged with a violation of the speed ordinance of the city of Newport. He was an enlisted man in the United States naval reserve and was engaged at the time of the alleged violation of the ordinance in carrying out the lawful orders of his superior officer. It is held in this case that the exigencies of the military and naval service of the national government must override the ordinary rules regulating the use of highways. "Any state law, the operation of which will hinder that government in carrying out such constitutional power (the conduct of the war) is, during the exercise of the power, suspended as regards the national government and its officers, who are charged with the duty of prosecuting the war." This suspension of local regulations, however, applies only in those cases in which there is actual military necessity for such suspension.

Conscription Act—Acts Constituting Evasion. United States v. Miller (U. S. District Court, April, 1918, 249 Fed. 985). The defendant in this case registered for the draft on June 5, 1918. In July by a declaration

of trust and assignment of mortgage he conveyed to another person property amounting to $25,300 and providing an annual income of $1700. This trust was created for a period of ten years during which time he was to receive none of the income except that the interest charges upon a $6000 mortgage upon his home were to be paid from that source. Upon being duly drawn for military service he presented to his draft board affidavits declaring that his wife was solely dependent upon him for support, that he owned no property except his home which was mortgaged as before mentioned, that he had no source of income except his law practice. Upon these facts three indictments against the defendant were presented: First, that he had "evaded the requirements of the act and neglected to perform a duty required of him by it" in that he had fraudulently set up a claim of dependency for his wife; second, that he had made a "false statement or certificate as to the fitness or liability of himself for military service," in that he had sworn that he had no income save from his law practice when in reality he had an income, from the trust fund, of $480; third, that he was guilty of perjury in so swearing. The court overruled a demurrer to all three counts of the indictment. It held that the facts alleged in the first two constituted offenses under the Selective Service Act. The demurrer to the third count, that charging perjury, was based upon the contention that the fact of an income of $480 yearly for the payment of the interest on the mortgage was immaterial and a charge of perjury could not be based upon the falseness of the affidavit which should have mentioned that sum. The court held that such income was material, that exemption upon the ground of dependency is, by the provisions of the act, based upon a full and accurate knowledge of the financial status of the registrant, and that no facts bearing upon such status can be irrelevant or immaterial.

Conscription Act—Habeas Corpus to Review Facts Regarding Physical Condition of Registrant Denied. De Genaro v. Johnson (U. S. District Court, February 27, 1918, 249 Fed. 504). De Genaro was drafted and sent to camp. He was not rejected because of physical disability either by the medical examiners of his local draft board or by the army examining officers at Camp Upton. The latter, however, ordered him to undergo a certain operation and he refused to do this. He sues for a writ of habeas corpus on the ground that the army authorities have no authority to compel him to submit to an operation and that without it he is physically unfit for military service. The court denied in sweep-

ing terms any jurisdiction on its part to issue the writ. "If a person were admittedly found to be physically disabled, by an examining board of the army, and if the army authorities should refuse to discharge him, for purely arbitrary or disciplinary reasons, the courts have no authority to take testimony, examine into the man's physical condition, upon a hearing, and discharge him as held without authority of law, even if the facts appear as he alleges." The decision of the examining board is final so far as any relief by way of habeas corpus is concerned.

Conscription Act—Supersedes Conflicting Provisions of Treaty with Foreign Nation. Ex parte Larrucea (U. S. District Court, October 6, 1917, 249 Fed. 981). Larrucea was convicted of evading the provisions of the Selective Service Act by failing to register. He asks for a writ of habeas corpus, alleging the unconstitutionality of the law, and also contending that, as a Spanish citizen who has taken out his first naturalization papers in the United States, he is exempt from every form of compulsory military service by virtue of the terms of the treaty between the United States and Spain in force since 1903. The Selective Service Act plainly includes among those subject to its provisions "male persons not alien enemies, who have declared their intention to become citizens." There is no evidence in the act of any intention on the part of Congress to exempt Spanish citizens. It seems clear, in short, that there is a conflict between the statute and the treaty. So far as the courts are concerned, however, a treaty occupies no position of superiority over an act of Congress and when such a conflict as this arises between the two the courts are bound to give effect to the one which was adopted latest in point of time. The treaty of 1903 is, therefore, of no avail to the defendant as a protection against the operation of the conscription act. The court does not open the question of the constitutionality of the Selective Service Act since that question has been finally settled by the Supreme Court.

Contracts—Right to Cancel Because of War. In re Boston Opera Company (U. S. District Court, January 26, 1918, 249 Fed. 269); *Same* (U. S. District Court, January 26, 1918, 249 Fed. 271). In the first of these cases the Boston Opera Company had entered into a contract of employment with one Smith, a musician, for the opera season of 1914–1915. The company reserved the option in this contract to cancel it in case of "riot, fire, railroad accident, public calamity, or any other casualties over which the party of the first part has no control." In Novem-

ber, 1914, after the outbreak of the European war it sent Smith notice that its contract with him was canceled since the war was a "public calamity" which made the maintenance of the opera impossible. Smith contended that the exigencies which gave the company the right to cancel its contract with him did not include a war to which the United States was not a party. The court refused to take this view and decided that the European war so strikingly altered the conditions under which the contract was made and so seriously burdened the company as to justify the view that it was a "public calamity" which would warrant the cancelation of the contract. This case is distinguished from that of Richards v. Wreschner (156 N. Y. Supp. 1054) in which the defendant agreed to sell Belgian antimony in monthly quantities up to September, 1914. Failure to perform the contract was held not to be excused by the outbreak of the European war in the absence of any specific reservation by the defendant of the right to cancel it in case of the development of conditions beyond their control.

In the second case above, the position of the company was even stronger, since the contract in question, which was with an Italian opera singer for the same time period and was canceled for the same reasons, explicitly reserved to the company the right to terminate it "in case of war." This was held to refer to any war which might alter materially the conditions under which the contract was made even though the United States was not a party to such war.

Deserter from the Navy—Authority to Arrest—False Imprisonment—Coercion. People v. Hamilton (New York, Appellate Division, May 17, 1918, 170 N. Y. Supp. 705). The defendant was the manager of a detective agency. Through his agent he arrested one Davidson, a sailor in the United States navy, who at the time he was seized by the defendant was a "straggler," having overstaid his shore leave. The sailor was taken in handcuffs to the defendant's office and kept a prisoner there for 9 days, thus making him a "deserter" due to his prolonged absence from his ship, during which time efforts were made by the defendant to secure from the bureau of navigation in Washington the offer of a reward for his return to the proper naval authorities. These efforts were carried on by making false statements and were finally successful, and a reward of $50 was paid to the defendant. The acts of Congress respecting the arrest of deserters or stragglers from military or naval service confer the right to make such arrests only upon a "civil officer having authority under the laws of the United States, or of any

state, territory or district." The defendant was not a civil officer and had been given no such authority. He was convicted of violating section 530 of the New York Penal Law which makes it a misdemeanor to "coerce" another person with a view to compelling wrongfully and unlawfully another person to do or abstain from doing an act which he has a legal right to do or to abstain from doing. While admitting that this statute was enacted for the purpose of dealing with labor disputes the court held that it could be applied to the case in point, since the facts proved brought the conduct of the defendant squarely within the provisions of the law.

Disbarment of Attorney—Violation of Conscription Act as Crime Involving Moral Turpitude. In re Hofstede (Idaho, June 25, 1918, 173 Pac. 1087). Hofstede was convicted of advising men of registration age not to register for the draft. He was then summoned to show cause why he should not be disbarred in accordance with the state statue authorizing the disbarment of attorneys by the state supreme court or district courts on the ground of conviction of felony or misdemeanor involving moral turpitude. His defense was based upon the contention that the crime of which he had been convicted was not one which involved moral turpitude. The court did not agree with this view but decided that an effort to interfere with the work of raising an army in the United States for the conduct of the war was an act of disloyalty and involved moral turpitude. The disbarment was, accordingly, ordered.

Espionage Act—Inciting Insubordination in Army or Navy. United States v. Krafft (U. S. Circuit Court of Appeals, April 23, 1918, 249 Fed. 919). The defendant was convicted of violating the third section of the Espionage Act of June 15, 1917, by uttering in the presence of soldiers of the United States army statements intended to cause insubordination, mutiny, disloyalty and refusal of duty on the part of such soldiers. The trial judge charged the jury that they might find a verdict of guilty only if satisfied that the statements alleged had actually been uttered and had been uttered with the intention on the part of the defendant to cause insubordination, mutiny, disloyalty, and refusal of duty. He refused to charge the jury that in order to convict the prosecution must prove that such insubordination, etc., had actually resulted from the defendant's remarks. This court held on appeal that the jury had been correctly charged. A violation of the clause of the statute in question results even from an entirely unsuccessful attempt to

stir up mutiny and disloyalty in the army or navy. To make the defendant's guilt dependent upon the results of his criminal efforts would be equivalent to making it depend not "upon what he did in the way of counseling disloyalty, but upon what his hearers did in the way of following his directions. In other words, the defendant could do all in his power to bring about disloyalty, but as long as he did not succeed he committed no crime." Such a construction is entirely foreign to the purpose of the Espionage Act, which aims to prevent not merely the results of disloyal propaganda but the propaganda itself.

Freedom of Press—Ordinance Prohibiting Publication and Sale of Certain Newspapers. Star Co. v. Brush (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 987); New Yorker Staats-Zeitung v. Brush (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 993); German Herold Publishing Co. v. Brush (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 993). The city of Mt. Vernon, New York, passed an ordinance forbidding the publication or sale of any newspapers printed in the German language and of the *New York American* and the *New York Evening Journal* which were specifically named. The preamble to the ordinance declared that these papers were deemed to be "harmful to the best interest of this nation in the prosecution of the war." These three cases, which may be discussed together, are based on motions by the plaintiff newspapers for injunctions pending final judgment in the case to restrain the enforcement by the city officials of Mt. Vernon of the ordinance mentioned. The injunctions were granted in each case for the following reasons set forth by the court: First, Mt. Vernon has no greater police power than that enjoyed by other cities of the same class, the regulation and suppression of newspapers is not among the powers which it enjoys by virtue of constitutional provision or statutory authorization and the ordinance in question is accordingly *ultra vires.* Second, the legislature of the state itself could not have passed such a law nor could it have authorized the city to pass this ordinance without violating section 8 of article 1 of the constitution of New York which provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsibile for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." If publications are circulated which are in violation of the law those responsible may be punished; but such publications cannot be suppressed arbitrarily because it is anticipated that they may violate the law or consti-

tute a public menace. The existence of a state of war creates no new power in this respect on the part of municipalities. If the national safety demands a restriction upon the freedom of the press that restriction should be imposed by national and not by local action.

Naturalization—Cancelation of Certificate of Citizenship—Disloyal Utterances as Evidence of False Oath of Allegiance. United States v. Wursterbarth (U. S. District Court, May 13, 1918, 249 Fed. 908); United States v. Darmer (U. S. District Court, May 10, 1918, 249 Fed. 989). In each of these cases an action was brought by the United States district attorney to cancel the certificate of citizenship of an American citizen of German birth on the ground that it had been fraudulently procured. Wursterbarth was naturalized in 1882 and at that time took the oath required by statute renouncing and abjuring all allegiance and fidelity to any foreign sovereign and especially the emperor of Germany. After the entrance of the United States into the war he was asked on three occasions to give money to the Red Cross or to the Young Men's Christian Association war fund. Each time he replied that he would do nothing to injure the country in which he was born, brought up and educated, that he hoped that Germany would win the war, and that he only came to this country on a vacation or visit. The truth of these statements was defiantly admitted. The court canceled the certificate of citizenship. These facts, it declared, indicated that Wursterbarth at the present time bears an allegiance to Germany superior to that which he bears to the United States. It is fair to presume that 35 years of residence and citizenship in this country would strengthen his allegiance to the United States and weaken his allegiance to Germany. It follows, therefore, the oath of allegiance to this country which he took at the time of his naturalization was false. The presumption in his favor arising from so long a period of good citizenship including the holding of public office is of no consequence since during that time no occasion has arisen until now to test the reserve allegiance which he had held to Germany. Furthermore any doubt regarding a person's right to enjoy the privileges of citizenship should be resolved in favor of the government. The Darmer case differs from this only in the fact that the expressions of disloyalty upon which the action was based were even more striking than in the case against Wursterbarth.

Shipping—Effect of War in Canceling Agreement between Owner and Charterer. Essex S. S. Co. v. Langbehn (U. S. Circuit Court of Appeals,

April 3, 1918, 25 Fed. 98). An agreement between a shipowner and charterer entered into in July, 1914, allowed the charterer to select as the destination of the cargo one of three ports, among which was Hamburg. As a British vessel the ship in question was forbidden on the outbreak of war between England and Germany from trading with an enemy port. The owner accordingly refused to take the vessel to Hamburg although that port had been selected by the charterer in accordance with the terms of the agreement. It was held, following the doctrine laid down in the case of The Kronprinzessin Cecilie (244 U. S. 12, 37 Sup. Ct. 490, 61 L. Ed. 960), that the outbreak of war justified the nonperformance of such a contract. This release from obligation, however, was mutual. Since the owner could not be compelled by the charterer to take his vessel to a German port in violation of the law of his country, so likewise the owner could not compel the charterer to select either of the other two ports named in the agreement as the destination of the vessel when he had originally and in good faith selected Hamburg.

NEWS AND NOTES

EDITED BY FREDERIC A. OGG

University of Wisconsin

By action of the members of the executive council, it has been decided to postpone indefinitely the annual meeting of the American Political Science Association, which it had been voted to hold at Cleveland in December. This decision has been based mainly on the request of President Wilson urging the reduction of travel in war time as much as possible. Consideration may later be given to the question of holding a meeting early in the summer of 1919; and announcement will be made of any action taken.

Professor W. B. Munro, of Harvard University, is serving with the general staff committee on education and special training, in connection with the plans and operation of the students' army training corps at colleges and universities.

Professor James W. Garner, of the University of Illinois, visited France and Great Britain during the past summer, collecting data on the international law problems of the present war.

Professor C. A. Dykstra, of the University of Kansas, is acting for the year as secretary of the Cleveland Civic League.

Dr. B. F. Moore, of the University of Kansas, is attached to the war trade board at Washington.

Mr. Harry T. Nightingale, of the Illinois state board of equalization, has been appointed acting assistant professor of political science at Oberlin College. Professor Karl F. Geiser is on leave of absence for the year, engaged in war work.

Dr. Benjamin B. Wallace, of the political science department at Northwestern University, has resigned.

Mr. Homer Talbot, secretary of the municipal reference bureau at the University of Kansas, gave courses in government in the summer session of the University of Texas.

Professor Harlow Lindley, of Earlham College, gave instruction in political science at Stanford University during the spring and summer sessions.

Mr. Dorsey W. Hyde, Jr., has been appointed as librarian of the New York City municipal reference library, in place of Dr. C. C. Williamson.

Professor J. Q. Dealey is chairman of the military and naval committees at Brown University. Professor J. C. Dunning, of Brown, spent the summer at the S. A. T. C. camp at Presidio, San Francisco, in preparation for the training of the S. A. T. C. unit at Brown.

Mr. Thomas S. Barclay, instructor in political science in the University of Missouri, has entered the foreign service of the American Red Cross.

Mr. R. C. Journey, instructor in political science in the University of Missouri, who had leave of absence in 1917–18 for graduate work at Columbia University, has been appointed legislative reference librarian of the Missouri library commission.

Professor J. Allen Smith, of the University of Washington, has been appointed acting professor of political science at Leland Stanford Junior University for the year 1918–19.

Professor Thomas H. Reed has resigned the city managership of San José, and has resumed his professorship at the University of California. Dr. J. R. Douglas, of the same institution, is a member of the investigating staff of the food administration at Washington.

Professor A. N. Holcombe of Harvard University, Professor Edwin A. Cottrell of Ohio State University, and Professor Victor J. West of Leland Stanford Junior University, are members of the staff of the United States bureau of efficiency. Dr. Victor J. West has been promoted from assistant to associate professor.

Professor Chester Lloyd Jones, on leave of absence from the University of Wisconsin, has been appointed director of the bureau of foreign agents of the war trade board at Washington.

The French government has established in Paris a *Bibliothèque et Musée de la Guerre,* intended to be a depository for materials of every description that will be useful to future historians of the great war. Professor Adolphe Cohn, of Columbia University, has been commissioned to collect, for shipment to France, all materials emanating from American sources, not only since the entrance of the United States into the conflict, but since August, 1914. Professor Cohn invites readers of the REVIEW who have in their possession materials of this kind to communicate with him.

Courses in Government for the S.A.T.C. The following program of courses in government for colleges and universities in connection with the newly established student's army training corps, based on a plan prepared by an informal committee of members of the American Political Science Association, has been approved by the general staff committee on education and special training:

Three courses are outlined, each to involve three class hours and six hours of preparation a week for three months: One course deals with European governments; one with the general principles of American government; and one with war administration. Each of the two courses first named should include a general study of the subject indicated, but with special attention to the problems and methods of war time conditions.

Wherever possible, it is desirable that both the courses in European governments and in American government be offered in the first term, for different classes of students; and in some institutions it may be possible to offer each of the three courses from the beginning.

At institutions where only one course can be given each term, either the course in European governments or that in American government may be offered first. The latter is in accordance with the usual practice of American colleges and universities. In favor of giving the European governments first, it may be said that this will make it possible for the older students, who may be in college not more than three months, and many of whom will have had a high school or college course on American government, to learn something of the governmental organization of the countries where they are likely to go. This arrange-

ment also renders it possible to make the general course in American government connect directly with the more advanced and technical course in war administration, which should be taken after one or more general courses in government.

The courses in European governments should have special references to Great Britain, France and Germany, with some attention to Italy, and Austria-Hungary. The following topics are suggested as worthy of emphasis:

Electoral rights and representation; parliamentary and cabinet government, in Great Britain, France and Italy; autocracy and bureaucracy, in Germany and Austria-Hungary; theories of state sovereignty; military administration; local administration, especially in France and Germany; civil rights—in time of war.

The course in the general principles of American government should include the following topics:

Fundamental principles—democracy and liberty; the Constitution of the United States; outline of governmental organization; expansion of governmental functions—before and during the war; citizenship, and status of aliens; the relation of the civil to the military power.

Less attention should be given than under ordinary conditions to some topics—such as the details of party history and organization, election methods, legislative organization and procedure, and local administration.

The course in war administration should be open only to those who have had the previous courses or their equivalent. The following topics are suggested as appropriate:

War powers of congress; war legislation; war powers of the President; organization and administration of the army and navy; war finance; war boards and commissions (shipping board, war industries board, food and fuel administration, etc.); state war measures; British war administration; the war cabinet; army and navy administration; new ministries (munitions, shipping, food, etc.); defense of the realm measures; French war administration.

Use should be made of texts of recent laws and official documents. The *Congressional Directory* and the *War Cyclopedia* give brief statements of the executive departments and other agencies in the United States. The report of the British war cabinet for the year 1917 is a valuable and readable account of British war administration to the end of that year.

War Department Organization. In addition to the new administrative agencies organized in connection with the war outside of the main executive departments, there have been important changes in the internal organization of several executive departments in the United States government. Especially in the war department, not only has the enormous expansion of the army vastly increased the scope of its activities, but the internal changes in organization have involved new bureaus and services. A record of the more important changes in war department organization is presented in this note.

Before April, 1917, the principal officers and agencies in the war department were the secretary of war, the assistant secretary, the general staff; a series of administrative bureaus under the adjutant general, inspector general, judge advocate general, quartermaster general, surgeon general, chief of ordnance, chief signal officer and the chief of engineers; also a chief of coast artillery, a militia bureau and a bureau of insular affairs.

Provost Marshal General. On May 22, 1917, Brigadier General E. H. Crowder, judge advocate general, was detailed as provost marshal general, in charge of the administration of the Selective Service Act. The organization of this office has been expanded with the progress of the work; and in July, 1918, it included the following divisions: administrative, aliens, appeals, classification, executive office, finance, industrial index, information, law, mobilization and publication. Selective service regulations have been promulgated and amended from time to time. Under these, more than 4500 civilian local boards were established, in each county and one for about each 30,000 population in larger communities; also medical and legal advisory boards, 156 boards of appeal in the United States judicial districts, and state headquarters under the supervision of the governors, normally acting through the adjutant generals of the states.

Through this organization has been accomplished the registration, at first of men between the ages of 21 and 31, and in September, 1918, of others between the ages of 18 and 45; and registrants have been classified and called for service.

Construction Division. In May, 1917, steps were taken for the construction of cantonments for the new forces, under the direction of a cantonment division in the office of the quartermaster general. Six-

teen national army cantonments were constructed in different parts of the country, the typical plan being for each cantonment to contain an army division of 40,000 men. Sixteen divisional camps were also established in the southern states for the national guard, which was called into the federal service in July. Each of these involved besides the quarters for the troops, the construction of roads, water supply, drainage, lighting facilities and other utilities. In October, the construction and repair division was abolished, and its functions transferred to the cantonment division. In February, 1918, the cantonment division was attached to the office of the chief of staff; and on March 13, the name of the division was changed to the construction division. This division, in July, 1918, was organized with the following branches: administrative, auditing, construction (with numerous sections), contracts, engineering, maintenance and repair, and materials. In addition to the construction work at camps and cantonments, it has charge of the construction of army posts, ordnance plants and depots, quartermaster depots and warehouses and terminals, signal corps plants and depots, hospitals, and housing and building in Washington.

Quartermaster Corps. Before the declaration of war the quartermaster corps comprised 280 quartermasters, 8000 enlisted men and 9000 civilians. By the end of June, 1918, there were 7000 officers, 135,000 enlisted men and 62,000 civilians. The general supervision over this corps in the office of the quartermaster general was formerly organized in five main divisions: administrative, finance and accounting, supplies, construction and repair, and transportation, each of which was subdivided into a number of branches. The principal local officers of the quartermaster corps were the department quartermasters in each of the six geographical departments, and the depot quartermasters at the supply depots in the different parts of the country.

Numerous changes in the organization of this corps have taken place. The services supervised by the construction and repair, and transportation divisions have been detached from the office of the quartermaster general; but with the development of other phases of work the organization has been elaborated by the creation of many new divisions and branches, and a readjustment of relations of these agencies has been made from time to time.

As already noted, the work of construction has been organized as a separate division in the war department, directly under the control of the general staff. The work of the transportation division has been

transferred by the organization of the embarkation service and the inland traffic service in the general staff. A motor transport service, organized in April, 1918, as part of the quartermaster corps, was detached in August, 1918, to become a separate motor transport corps.

Notwithstanding the loss of these services the increased volume of quartermaster activities is indicated by the creation of new divisions. In October, 1917, the remount branch of the transportation division became a distinct remount division; and a warehousing division was established, the name of which has since been altered to the depot division, and again to the operating division. In November, 1917, the conservation division was established, now known as the conservation and reclamation division. In January, 1918, the work of the supplies division was distributed between three divisions—subsistence, clothing and equipage (later styled the supply and equipment division), and the fuel and forage divisions. In May the supply and equipment division was again subdivided into three divisions—clothing and equipage, hardware and metals, and harness and vehicles; and in September a motors and vehicles division was organized. By these steps a series of functionalized procurement divisions was organized, each dealing with the procurement of certain classes of quartermaster supplies. In order to coördinate the work of the specialized procurement divisions there was also established, in January, 1918, a supply control division for the purpose of supervising the requirements for quartermaster supplies; in March the head of one of the leading mail order houses was designated as assistant to the acting quartermaster general; and in June a director of quartermaster purchases was provided with supervisory powers over the procurement divisions. The work of the operations division was also placed under the control of a director of quartermaster operations, to whom has also been assigned the supervision of the conservation and reclamation service.

The work of the administrative division has also been distributed. In April, 1918, a personnel and a methods control division were established, taking over some functions from the administrative division, and also making more definite provision for special investigations and planning of future policies. Later these three divisions were placed under the supervision of an executive officer; and in September, 1918, the methods control division and administrative division were combined under the name administrative division.

In June, 1918, a central disbursing division was established, taking over work formerly handled in a large part by the depot quartermaster

at Washington, and another assistant to the acting quartermaster general, in charge of finances, was designated to supervise the two finance divisions.

These changes in organization have been accompanied by important changes in methods of purchasing and distribution. Formerly quartermaster purchases were largely decentralized, being made through the general supply depots, which specialized to a considerable extent on particular classes of supplies. A policy of centralized purchasing through the procurement divisions at Washington and the council of national defense was developed; but in May, 1918, this was modified by establishing a series of zones assigned to the general supply depots, which were made responsible for ascertaining the production facilities in the zones, and contracts are made on the basis of information thus obtained.

Distribution of supplies to army ports and posts was formerly supervised through the six territorial military departments. By general orders of the war department, issued in July and October, 1917, the new camps and cantonments were exempted from the control of the territorial departments; and in matters of quartermaster supplies were placed under the supervision of the several general supply depots. By general order of July 3, 1918, all forts, posts, camps and other military stations in the United States were directed to send requisitions for supplies direct to general supply depots. To carry out this policy a series of distribution zones has been established, each assigned to one of the general supply depots.

Ordnance Department. Prior to the declaration of war there were 11 officers on duty in the ordnance office, with a civilian force of 96. By September, 1917, this had been expanded to approximately 450 officers and 1600 civilians. In May, 1917, a new supply division was established, and the ordnance office was organized in ten divisions. Some changes were made in this organization, and by the end of December there were twelve divisions, including new divisions for the base depot and nitrate fixation. In January, 1917, a general reorganization took place, establishing three supervising "bureaus," on general administration, control, and engineering; four operating divisions, on procurement, production, inspection, and supply; and two other divisions on nitrate fixation and the base depot in France. In May, 1918, the titles of the supervisory bureaus were changed to the administrative, engineering, and estimates and records divisions. Within each of the operating divisions, sections have been organized for different classes of ordnance supplies.

In March, 1918, eleven district ordnance offices were established, at Boston, Bridgeport, New York, Rochester, Philadelphia, Chicago, Cleveland, Cincinnati, Detroit, Pittsburgh and Ottawa, Canada. In July, an additional ordnance district was formed, with headquarters at St. Louis.

Air Service. The air service for the army continued for some time, as before the war, to form the aviation section of the signal corps. An air division was organized in the office of the chief signal officer, to deal with questions of personnel, training and aviation operations; while the design and production of aeroplanes and balloons were handled by subdivisions of the equipment division.

By act of October 1, 1917, Congress provided for an aircraft board, to consist of a civilian chairman, the chief signal officer and two other officers of the army, the chief constructor and two other officers of the navy, and two additional civilian members, to supervise and direct the purchase, production and manufacture of aircraft and materials therefor. This provided a central agency for dealing with problems of production for both army and navy aircraft; but the board form established, with representatives of different elements, was not adapted for the most prompt and effective action.

On May 20, 1918, by executive order under the Overman Act, the President redistributed the duties and functions of the chief signal officer, and provided for the transfer of the aviation section from the signal corps to a director of military aeronautics and for a bureau of aircraft production to have complete jurisdiction over the production of aeroplanes, aeroplane engines and aircraft equipment for the use of the army. On August 28, the director of aircraft production (Mr. John D. Ryan) was designated as second assistant secretary of war and director of air service, with supervision, control and direction over the bureau of aircraft production and the bureau of military aeronautics

Chemical Warfare Service. Problems of gas warfare were for more than a year handled by several governmental agencies. The ordnance department took up the manufacture of supplies for gas offense; the sanitary corps of the medical department undertook to investigate and prepare defensive measures; and the bureau of mines in the department of the interior organized an experimental station for research work in this field. A director of gas service was appointed to coördinate the work on gas warfare being conducted by the various bureaus of the

war department. In June, 1918, acting under the provisions of the Overman Act, the President directed that all of these agencies should be organized into a chemical warfare service, under the control of the war department.

The General Staff. When established in 1903, the general staff was designed to coördinate and supervise the work of the several administrative bureaus, and to study military problems and prepare plans for the national defense and the utilization of military forces in time of war. But the National Defense Act of 1916 had closely limited the number of officers who might be assigned to the general staff, and had also provided that members of the general staff corps should not undertake administrative work of the established bureaus. As interpreted by the judge advocate general the latter provision would have closely restricted the scope of the general staff's functions; but an opinion by the secretary of war in September, 1916, reaffirmed the view that the chief of staff should continue to supervise the various bureaus and to be the chief advisor of the secretary of war.

With the progress of the war, the general staff, like other branches of the army has greatly increased in numbers and in the volume and scope of its activities. Its supervision over the administrative bureaus has involved the consolidation of some services formerly handled by separate bureaus, and in some matters the general staff has come to exercise direct management.

In August, 1917, an embarkation service was organized as a section in the general staff, to supervise movements of supplies and to control army transports in the transatlantic service and commercial shipping and to supplement that service. On December 28 this was made part of a new storage and traffic section. In January a division of purchases was formed.

On February 9, 1918, a general reorganization of the general staff was announced, with the following divisions: executive, war plans, purchase and supply, storage and traffic, and army operations. On April 16, the divisions of purchase and supply and of storage and traffic were consolidated into a division of purchase, storage and traffic; and a coördination section was established. In May, the inland traffic branch of the transportation division in the office of the quartermaster general was transferred to the purchase, storage and traffic division of the general staff.

Another general reorganization was authorized in August. Under this, the executive division was replaced by an executive assistant; the military intelligence branch of the war plans division became a distinct division; and the organization of the several divisions was further developed. In the war plans division there were formed branches on war plans, regulations, training and instruction, and historical work. The operations division has branches on operations, personnel, equipment and motor transportation. The purchase, storage and traffic division has been organized with branches on purchase and storage, inland traffic, embarkation and finance.

A war council was organized in December, 1917, to oversee and coördinate matters of supply, field armies and the war department. This included the secretary of war, the assistant secretary, the chief of staff, and the official heads of a number of administrative bureaus—most of the latter being relieved of active bureau duties. A few additions were later made to this council; but during the summer it was disbanded.

Under the act of Congress providing for two additional assistant secretaries of war, appointments were made in May, 1918, and the functions of these officers were defined. The assistant secretary had general charge of war department administration; the second assistant secretary had supervision over purchase and supply for all bureaus; and the third assistant secretary was assigned to matters affecting the non-military life of the army. With a change in personnel of the second assistant secretary, the new official was given supervision over all aviation matters; and the assistant secretary was given supervision over all munitions supplies.

F.

NOTES ON INTERNATIONAL AFFAIRS

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The Russian Peace Treaties. The advent of the Bolsheviki to power on November 5, 1917, marked the third phase of the Russian revolution. The provisional government of the liberal leaders of the Duma, led by Prince Lvoff and Professor Miliukoff, had remained true to the cause of the Allies, but at the same time appeared to be unaware of the immediate necessity of revising the foreign policy of the government in the interest of holding the support of the Socialist groups and of satisfying the claims of Poland, Ukrainia, and other nationalities of the empire to some measure of autonomy. The imperialistic vision of a Russian Constantinople was in the eyes of the Socialists an argument against rather than in favor of continuing the war; and on the other hand the Poles, the Ukrainians and the Finns could not regard the revolution as the fulfillment of their hopes unless they received an assurance of territorial autonomy. On the advent of the Social Revolutionist party to power under Kerensky in July, 1917, an effort was made to obtain a revision of the "secret treaties" in the interest of putting the war on a more clearly defensive basis, and was also marked by a recognition of the need of satisfying the aspirations of the nationalities; but by the time of the proclamation of the "Republic" on September 16 it was too late to head off the separatist movement.

In November the new Bolshevik government announced the radical policy of recognizing "the right of the peoples of Russia to free self-determination." This was equivalent to a surrender of the ideal of Russian unity, even in the modified form of a federal republic, in favor of the satisfaction of the most extreme demands of the national groups. At the same time the Bolshevik government prepared to go to a similar extreme in respect to the conclusion of peace. They had pledged themselves upon their accession to power to obtain a general armistice, or a separate one of their own if the other Allied nations should be unwilling to coöperate. A temporary armistice was signed at Brest-Litovsk on December 5, and a definite armistice on December 15, the latter providing for immediate peace negotiations.

Two questions of international law were presented by the action of the Bolsheviki. Was the new Russian government to be recognized by the Allies as a *de facto* government, as the provisional government of March had been? Secondly, was the Russian government legally bound by the Pact of London of September 5, 1914, by which the Allies bound themselves not to enter upon separate negotiations leading to peace? Both questions were answered by an appeal to expediency. On the point of recognizing the new government the Allies disregarded the extent of *de facto* control possessed by it, and withheld recognition pending further evidence of its policies. And the Bolsheviki on their part disregarded the rule of succession in international law, and frankly asserted that they were not bound by treaties made by the Czar under the old régime without the consent of the Russian people. As a matter of strict law they were doubtless the successors of the obligations as well as of the rights of the Russian government before the revolution; but in their opinion this was simply because international law had never provided for the sudden change of an absolute government with imperialistic ideals into a democratic government to which the Pan-Slavic ideal and the possession of Constantinople made no appeal; and it can only be by an unreal theory of state personality that the Russia of November, 1917, can be regarded as the same Russia that signed the compact of 1914. At any rate the Bolsheviki claimed the application of the rule of *rebus sic stantibus*.

Peace negotiations began on December 22. The Bolshevik delegates laid down for the guidance of the Conference the principle of the self-determination of nationalities, to be determined by a referendum of the peoples concerned; in the case of mixed nationalities special provision was to be made for the protection of the rights of minorities in respect to national culture and, if practicable, local self-government. The principle of no annexations and no indemnities was also to govern the terms of peace. On December 25 Count Czernin announced what appeared to be at first sight a full recognition of the principle of a peace "without forcible acquisitions of territory and without war indemnities," with the proviso, however, that Russia's allies should likewise agree to the same conditions. At the same time he gave his assent to the principle of the self-determination of national groups. Efforts were made by the Bolsheviki to have the Allies join in the peace negotiations on the strength of Count Czernin's declaration, with the understanding that on their part they would agree to self-determination for Ireland, Egypt, India, Mesopotamia, Madagascar and Indo-China, otherwise Russia would continue the negotiations alone.

Failing to obtain a favorable response from the Allies, the Bolshevik delegates found themselves in the presence of new terms from Germany which provided for the demobilization of the Russian armies and the evacuation by Germany of occupied Russian territory, except in so far as the occupied territory had already declared in favor of independence and separation from Russia. in which case the time of the evacuation should be fixed by a special commission following the taking of plebiscites in such territories. The result of this latter provision was to leave Poland, Lithuania, Courland, and portions of Livonia and Esthonia for the time being in the hands of Germany, with the obvious possibility that the plebiscite might be so managed as to put the territories in a condition of dependency upon Germany. To explain the contradiction between these terms and those announced by Count Czernin on December 25 the German delegates announced that the latter terms were canceled by the fact that the allies of Russia had not accepted what was made as a general offer to all the belligerents. The deception was denounced by the Soviet press and by Foreign Minister Trotsky; but the German government, seeing itself master of the situation in view of the demoralized state of the Russian army, refused to yield. On February 10 Trotsky, although refusing to sign a formal treaty, announced that the state of war between Russia and her former enemies was at an end. Military pressure by the German armies forced the capitulation of the Bolshevik delegates, and on March 3, 1918, the formal peace treaty was signed and then ratified within the prescribed fortnight by the Pan-Soviet congress at Moscow, the Bolsheviki announcing meanwhile that the signature and ratification had been put through under duress and would not be regarded as binding when the time of necessity was over.

The terms of the treaty were even more exacting than those of December 28. Russia undertook to evacuate immediately the parts of Ukrainia, Esthonia, Livonia, and Finland then occupied by her troops, as well as the Anatolian provinces of Turkey and the districts of Erivan, Kars and Batum. Esthonia and Livonia were to be occupied by a German police force until national institutions should be established and order restored in the two states. Courland, Lithuania and Poland were to be no longer under Russian sovereignty, and Russia undertook to refrain from all interference in the internal affairs of those territories and to let the Central Powers determine their future fate in agreement with their populations. Ukrainia, having declared its independence and concluded a separate treaty of peace with Germany, was to be recog-

nized by Russia. Further provisions related to the cessation of Bolshevik agitation in the ceded territories, the demolition of fortifications on the Aland Islands, a guarantee to respect the political and economic independence and territorial integrity of Persia and Afghanistan (thus undoing the Russo-British treaty of 1907), the exchange of prisoners, and the establishment of new commercial relations.

In respect to the right of self-determination to be enjoyed by Courland, Lithuania and Poland, it was openly stated at Brest-Litovsk by the German foreign minister that the voice of representative institutions rather than a plebiscite should express the will of the people. The opportunity such a policy gave for the control of the referendum by the party in military occupation of the territory caused the clauses in question to be criticized by the Socialist press of Germany itself as a clear case of annexation. The commercial provisions of the treaty, contained in appendices to Article II, were designed to effect a continuation of the treaties of 1894 and 1904, which put an end to the tariff war between the two countries and granted special concessions for the importation into Russia of German iron, steel, coal and woolen goods. It has been said by economists that the new Russian tariff bill proposed in 1914 as a substitute for the treaty with Germany about to terminate was regarded with such alarm by German merchants, who had come to look upon Russia as a sort of *hinterland*, that they were ready to acquiesce in a war as a means of restoring their favored position. The control of Riga and the Duna river, given to Germany by the treaty of Brest-Litovsk, enables her to control a part of the overseas trade of Russia and better to protect her own trade over the land frontier.

The attitude of the allies of Russia towards the treaty of Brest-Litovsk was expressed in a protest issued on March 18, 1918, from the British foreign office, in which the governments of Great Britain, France and Italy, without recognizing the *de jure* power of the Bolshevik government to conclude a treaty, repudiated the agreement as having been signed under duress. On March 11 President Wilson sent a message to the congress of the Soviets, then in session at Moscow, in which he expressed "the sincere sympathy which the people of the United States feel for the Russian people at this moment when the German power has been thrust in to interrupt and turn back the whole struggle for freedom and substitute the wishes of Germany for the purposes of the people of Russia." None of the allied powers took the attitude of denouncing the Bolshevik government for having violated the pact of September 5, 1914; and they chose at the time to regard it rather as the victim of

German domination than as the victim of its own radical principles, the effect of which might have been observed in the belief of Lenine that however unjust the treaty might be it must in due time be overthrown by the social revolution in Germany and Austria-Hungary for which the revolution in Russia was but a preparation. The reply of the Soviet congress expressed its gratitude to the American people, but above all to the laboring and exploited classes of the United States for the sympathy expressed by the President, and further took the opportunity of pointing out the imperialistic character of the war and of holding out the hope that the laboring masses of all countries would before long throw off the yoke of capitalism and establish a socialistic state of society.

The American government, however, still refused to emphasize the connection between Russia's separate treaty and the revolutionary principles of the Soviet government. The Soviet government still remained formally unrecognized, and in some respects the Allies continued to regard Russia as at war with Germany. On July 25 the American ambassador, in declining to come to Moscow at the request of the Bolshevik foreign minister, stated that while the American government refrained from interfering in the internal affairs of Russia, it still considered the Russian people as its allies and had more than once appealed to them to unite with it in resisting the common enemy.

In the meantime the intervention of the allied forces at Murmansk and at Archangel on July 15 and August 4 was resisted by the Bolshevik government, Lenine announcing privately that the act amounted to a state of war. Disregarding entirely the Soviet government at Moscow the Allied armies negotiated directly with the anti-Bolshevik elements who had formed a provisional government of the country of the north, with headquarters at Archangel, the members of the new government being former delegates to the Russian Constituent Assembly from the provinces of Novgorod, Archangel, Vologda, Viatka, Kakan, and Samara. On August 22 an official announcement was made by representatives of Great Britain, France, and the United States at Archangel to the effect that it was not true that the Allied forces were, as Lenine and Trotsky had said, the enemies of Russia, but that they had landed at Archangel at the invitation of the "legitimate" government and with the complete consent of the people, the "legitimate" government drawing its legal character from the Constituent Assembly as the source of rightful government in Russia. A similar attitude was adopted by the Allied forces at Vladivostok towards the anti-Bolshevik elements in

Siberia, who had formed in January a temporary government of autonomous Siberia and whose program was the reëstablishment of law and order and the calling of a Siberian Constituent Assembly.

On September 21 President Wilson issued an appeal to the neutral governments of the world, reciting the campaign of mass terrorism and the wholesale executions to which the people of Moscow, Petrograd, and other cities were subject, and inquiring whether those governments would not be disposed to "take some immediate action, which is entirely devoid from the atmosphere of belligerency and the conduct of war, to impress upon the perpetrators of these crimes the aversion with which civilization regards their present wanton acts." At the same time documentary evidence was published by the committee on public information showing the Bolshevik government to be the paid agents of Germany both in respect to the November revolution and the conclusion of the Brest-Litovsk treaty and in respect to the proposed exploitation of Russian industries by Germany after the war.

The Ukrainian and Finnish Peace Treaties. While the negotiations at Brest-Litovsk were in progress between the Bolsheviki and the Central Powers, a separate peace treaty was signed with Ukrainia on February 9, 1918. Shortly after the outbreak of the revolution Ukrainia began to assert claims to autonomy, but showed little sign of desiring complete independence until the Bolsheviki demanded the abdication of the Rada at Kieff as not being representative of the proletariat. Ukrainia, being an agricultural rather than an industrial state, resisted the demand for the establishment of a Soviet government and on November 20 proclaimed itself an independent state, under the name of the Ukrainian People's Republic. On December 27 the new republic sent a special mission to Brest-Litovsk to conduct separate peace negotiations with the delegates of the Central Powers. For two weeks in January the Ukrainian delegates attended the general peace conference until the Petrograd Soviet declared war upon Ukrainia on January 26. This placed the German delegates in the position of having to give formal recognition to the independence of Ukrainia, which it did on February 9 in spite of the capture of Kieff by the Bolsheviki the day before.

The provisions of the treaty, while generous in respect to the territory assigned to the new state, in particular handing over to it Kholm, which had been regarded as Polish for more than six centuries, are exacting in their demands upon the resources of the country. Article VII pro-

vides for the reciprocal exchange of the more important surplus supplies of agricultural and industrial products, in a quantity and at a price to be fixed by a joint commission. In carrying out this article, which was relied upon to furnish the German people with a reserve food supply, the German military authorities found it necessary to overthrow the Rada and to occupy and administer a large part of the Ukrainian territory. Further, Article VII provides that certain parts of the Russo-German treaties of 1894 and 1904 be continued in force, and in particular provides by implication that Germany might claim the enjoyment of any preferential treatment which Ukrainia might grant to any country except one bordering upon her, thus offsetting the economic boycott foreshadowed in the Conference of the Allies at Paris in 1916.

Four days after the treaty of peace between Russia and the Central Powers was signed, Finland concluded a separate treaty with Germany. As in the case of Ukrainia the treaty with Finland carries with it a recognition by Germany of the independence of the country, and again as in the case of Ukrainia the recognition of the independence of Finland by Russia is complicated by the character of the *de facto* government. The Finnish Diet which proclaimed the independence of the country in December, 1917, was bourgeois in character and was supported by the "White Guards," a military organization which had been formed after the revolution in Russia to assist the national militia in maintaining order. In January, 1918, the Finnish Socialists overthrew the "bourgeois" government and established a Socialist Workmen's Republic, after the model of the Soviet Republic of Russia. But though sympathetic with the Soviet government of Russia the Finnish Socialists were advocates of secession, and they succeeded in concluding a treaty with Russia early in March, 1918, by which the All-Russian Soviet recognized the independence of the Finnish Republic and entered into close relations of friendship with it, stipulating in particular that there should be free intercommunication between the two countries by land and sea, and that the citizens of each country when in the other country should enjoy the rights accorded to its own citizens.

While this treaty was being concluded between the "Red" elements of the two countries, the deposed "bourgeois" government of Finland concluded a treaty of peace with Germany on March 7. This brought the German army to the support of the White Guards in their struggle with the Red Guards, and by the middle of April Helsingfors, the capi-

tal, was in the possession of German and Finnish troops. Thereafter Germany used its army of occupation to enable it to obtain an increasing control over the economic resources of the country and to bring pressure upon Finland to establish a monarchical form of government. The treaty of peace, besides providing for the conclusion of certain treaties to replace those formerly in force between Germany and Russia, and for the reëstablishment of private (German) rights injuriously affected by the war, stipulates that the fortifications on the Aland Islands shall be demolished and that the islands shall be regulated in respect to their military and shipping conditions by a special agreement between Germany, Finland, Russia and Sweden. In this latter respect the treaty endeavors to allay the fear of Sweden lest the strategic position of the islands be a constant menace to her safety, a similar servitude having been imposed upon Russia by the treaty of Paris of 1856.

The Roumanian Peace Treaty. The treaty between the Central Powers and Roumania marks another step in the policy of German domination over her conquered enemies on the eastern front. On March 5 a preliminary treaty was signed at Brest-Litovsk which was followed by the Peace of Bucharest of May 6, 1918. Apart from the demobilization of the Roumanian army and the evacuation of Austro-Hungarian territory occupied by it, the provisions of the final treaty deal chiefly with cessions of territory, economic relations, and the regulation of the navigation of the Danube. On the first point Roumania cedes to Bulgaria that part of the Dobrudja which fell to her as a result of the Treaty of Bucharest of 1913. The rest of the Dobrudja north of the Bulgarian frontier and east of the Danube Roumania cedes to the "allied powers" (Central Powers) as a body, with the proviso, however, that the latter "will undertake to see that Roumania shall receive an assured trade route to the Black Sea by way of Tchernavoda and Constanza." The condominium thus set up over northern Dobrudja will give Germany control of the pipe line running from the oil fields to Constanza. The frontier of Roumania on the west is to "undergo rectification in favor of Austro-Hungary" as indicated on an annexed map, which appears to surrender to Austria-Hungary the ridges of the Carpathians with their virgin forests, state property of Roumania and estimated as worth half a billion dollars. In return for the loss of the Dobrudja and for the rectification of her western frontier Roumania was to be compensated by the annexation of the southern part of Bessarabia. This cession was not, however, provided for in the treaty of

peace, but left to subsequent arrangements. Bessarabia thereupon took action upon its own initiative, and on April 9 the national assembly voted for the union of the entire country to Roumania. On April 12 the Bessarabian delegates were received at Jassy and the King of Roumania formally proclaimed the "indissoluble union of the ancient province of the Moldavian crown to the mother country." Roumanian statesmen, however, refuse to consider the annexation of Bessarabia as anything more than the restoration of stolen territory for which no compensation need be given.

The economic provisions of the treaty amount to the creation of a virtual protectorate over Roumania in respect to the exploitation of her natural resources. The army of occupation is to be maintained at the expense of Roumania, and is to have the right to requisition grain, cattle and wool, as well as timber, oil and oil products. In addition a separate treaty is reported to provide that for a period of years the Central Powers shall have the exclusive right of boring and exploiting the state oil lands of Roumania, including the use of installations already in existence and of the state railways, together with the right to expropriate private owners of wells and to build new lines of railways at convenience. This right of monopoly is to be exercised through a company whose capital is to be more than three-fourths Austro-German and the remainder Roumanian, and which will not be subject to the Roumanian laws concerning foreign corporations. The price of petroleum will be fixed by the company. Disputes arising out of the acts of the company are to be settled by arbitration, with the proviso that in case the parties cannot agree upon an arbitrator he is to be nominated by the president of the tribunal at Leipzig; in case of an appeal the case is to be brought before the tribunal at Bucharest or before that of Berlin at the choice of the defendant. A German court would thus hear an appeal from the decision of a German-chosen arbitrator, and a régime of capitulations is set up for questions affecting the vital interests of Roumania.

Finally, the main treaty provides for the conclusion of a new Danube Navigation Act under certain specified conditions: the Danube Commission is to be continued under a new form, namely, it shall henceforth comprise only representatives of the states situated on the Danube or on the European coasts of the Black Sea; free navigation is to be granted to ships of the other contracting parties (with a suggestion that the Act might permit levying tolls upon ships of non-contracting states); Roumania is to abolish her present ad valorem duty on imports and

exports in favor of new duties to be applied to the facilitation of shipping; and the contracting powers may maintain warships on the Danube. A death blow is thus dealt to one of the most progressive international institutions; for the Danube Commission, created by the Treaty of Paris of 1856, was independent of the territorial governments, and its members with their privilege of territorial inviolability superintended the free navigation of the Danube for the merchant ships of all nations alike. The discrimination introduced by the Central Powers forecasts a repudiation of the international character of the great highways of commerce and a return to the exclusive policies of the 18th century.

Recognition of the Czechoslovak Nation. The official recognition accorded to the Czechoslovak nation by the United States government in September was of a unique character in the history of international relations. The traditional rule of international law has been that a new nation will be recognized by the existing members of the family of nations only when, after successful revolution against the state of which it was formerly a part, it has given evidence of its ability to maintain itself. In most cases the new community is recognized as a *de facto* belligerent before its final recognition as a *de jure* state is accorded. In every instance the claimant for international recognition must have obtained possession of definite territory and must have organized a government capable of giving expression to the will of its people. But in the case of the recognition of the Czechoslovak nation these conditions have not been fulfilled. In the first place recognition has been accorded, not to a government established in the territory inhabited by the Czechoslovak people, but to a National Council with headquarters in Washington. Moreover, the new state can hardly be said to have at present a *de facto* existence. Its active supporters are to be found among the groups of Czechoslovaks in Siberia and in the states of the Entente Allies. Technically these groups are alien enemies, but because of their known hostility to Austria-Hungary they have been shown from the beginning of the war exceptional treatment, and in France they have been organized into distinct military units with a national flag. The National Council is therefore an absentee government in command of a number of distinct armies fighting against the nation of which their territory is still a *de facto* part and to which their brethren in Bohemia, Moravia and Slovakia are still rendering a formal allegiance.

How far can it be said that this National Council represents the people of the territories which are to be included in the new nation? As a point of fact there is but little doubt but that the National Council would have the support of a large majority of the people it assumes to represent if they were in a position to endow it with authority by a formal referendum. Moreover the people of those territories have on various occasions expressed, through their delegates to the Austrian Reichsrat, notably in a declaration drawn up at Prague on January 6, 1918, their desire to form a national state, and they have failed to establish a legal government only because of the difficulty of organizing a revolution when the fighting forces of their country were scattered throughout the divisions of the Austro-Hungarian army. Further, it is to be noted that the National Council has only been given provisional recognition, that is, to use the language of the British government on August 13, it was recognized "as the supreme organ of the Czechoslovak national interests and as the present trustee of the future Czechoslovak Government to exercise supreme authority over this allied and belligerent army."

The territory of the new state is, on the authority of Dr. Masaryk, president of the National Council, to embrace Bohemia, Moravia and Silesia within their historical boundaries, together with Slovakia as far south as Presburg and as far east as Ungvar, comprising in all about 12,000,000 people. Within these boundaries Bohemia and Moravia will embrace a large minority of Germans, estimated as high as thirty-five per cent in Bohemia and thirty per cent in Moravia, while Silesia will embrace not only a German minority of nearly fifty per cent but a Polish minority as well. Dr. Masaryk rejects the idea of a rectification of the historical boundaries, but promises to confer upon the German minority "the same local self-government which obtains in other parts of the country." This, however, would not exempt the German minority from being conscripted into a future Czechoslovak army to fight, it might be, against their racial brethren in Germany or Austria. As the German elements are mostly to be found in an outer circle around Bohemia and in the northwestern part of Silesia, it has been regarded by many publicists as more consistent with the principle of self-determination that the boundaries should be drawn to exclude that portion of the German population rather than to attempt to reproduce the present situation in Austria and Hungary on a smaller and reversed scale.

The conflict between historical boundaries and the principle of self-determination is due both to the fact that national boundaries have been drawn not according to logical principles but according to the dictation of conquering armies, thus including large alien populations, and also to the fact that where originally embracing a homogeneous people the ancient boundaries have been so encroached upon by immigration that they have ceased to be logical any longer. Historical Poland held within its boundaries many subject nationalities, its dominion extending at one time from the Baltic to the Black Sea, so that the very claim of Poland to the right of self-determination involves a repudiation of the Polish boundaries of the 17th and 18th centuries.

Many students of the Austro-Hungarian problem claim that the autonomy of the several nationalities as members of a federal empire would be a better solution than the creation of new independent states. The earlier attitude of the United States government, expressed in the address of the President to Congress on December 4, 1917, was one of noninterference in what were regarded as the domestic affairs of another state. "We owe it, however, to ourselves to say that we do not wish in any way to impair or to rearrange the Austro-Hungarian Empire. It is no affair of ours what they do with their own life, either industrially or politically." Scarcely a month later, in an address before Congress on January 8, 1918, President Wilson made a new statement of the war aims of the United States under fourteen headings, the tenth of which called for the "freest opportunity of autonomous development" for the peoples of Austria-Hungary. Three days earlier the British Prime Minister made a similar statement of terms in which he asserted that unless self-government were granted to the Austro-Hungarian nationalities which desired it, it would be impossible to hope for "a removal of those causes of unrest in that part of Europe which have so long threatened the general peace."

The advantages claimed for the federal solution, which would create a series of autonomous states united under a constitution defining their rights and the relations between them and the central government, bear chiefly upon the better protection thus afforded to the hostile minorities which will necessarily be included in the new states, and upon the superior economic advantages enjoyed by the states as members of a federation having no tariff boundaries between its members and offering unimpeded transportation over the rivers and waterways of the federated territory. The Czechoslovaks are, indeed, in a peculiarly difficult situation in that they form an inland state with no

outlet to the sea except through German, Austrian, or, it may be, Jugoslavic territory. On the other hand it is strenuously urged that a solution which might have been possible before 1914 has now become impossible in consequence of the hatreds engendered by the administrative policies pursued by Austria-Hungary during the war and by the conscription of the Czechoslovaks into the imperial army against their will. Moreover, it is felt that under the scheme of a federation the foreign policy of the federal empire would be controlled by the predominant Austro-German-Magyar group, acting in close harmony with Berlin, whereas an independent Czechoslovak state, especially if supported by an independent Jugoslav state, would be a permanent barrier to the plan of a Pan-German *Mittel-Europa*. The problem of the Czechoslovak nation cannot, it is clear, be considered in isolation; and the justice which the Allied powers wish to see done to the claims of a long-suffering people will doubtless be attainable only within the structure of a larger League of Nations.

Jugoslavic National Unity. While Great Britain, France, and the United States have officially recognized the new Czechoslovak nation, another group of Slavs is pressing for similar recognition as an independent international person. On July 4 the Jugoslav flag marking the unity and independence of the nation was formally raised on the grounds of the agricultural building in Washington before a large gathering of native citizens both of the independent southern Slav states and of the subject nationalities of Austria and Hungary allied to them in race and language. Semi-official recognition had already been given by the United States government in the form of a declaration from the department of state on May 29 announcing that "the proceedings of the Congress of Oppressed Races of Austria-Hungary, which was held in Rome in April, have been followed with great interest by the Government of the United States, and that the nationalistic aspirations of the Czeco-Slovaks and the Jugoslavs for freedom have the earnest sympathy of this Government." Following this statement from the American government the Supreme War Council of the allied governments expressed on June 4 "the greatest sympathy with the national aspirations of the Czechoslovaks and Jugoslavs for freedom."

The chief stumbling block in the path of the movement for Jugoslavic unity was removed at the above-mentioned congress. Until the meeting of this congress the claims of Italy to Dalmatia, sanctioned by the treaty between Italy and the Entente Allies which brought

Italy into the war, appeared to be an effective barrier against coöperation between the Allies and the anti-Austrian and anti-Hungarian subject peoples. At the congress a declaration was adopted, in which Italy concurred, to the effect that "the unity and independence of the Jugoslav nation is considered of vital importance by Italy," and that "the deliverance of the Adriatic Sea and its defense from any enemy is of capital interest to the two peoples," and that "territorial controversies will be amicably settled on the principle of nationality, and in such a manner as not to injure the vital interests of the two nations, interests which will be taken into account at the peace conference."

Boundaries for the proposed Jugoslav state have been conservatively drawn to include Serbia, Montenegro, Bosnia, Hertzegovina, Dalmatia, Croatia-Slavonia, and Carniola. The Declaration of Corfu, which may be regarded as the cornerstone of the new state, was drawn up on July 20, 1917, and signed for Serbia by the minister of foreign affairs, M. Pashitch, and for the other nationalities by M. Trumbic, president of the Jugoslav committee. Its two most important provisions relate to the nature of the union to be effected and to the territory to be brought under its control. "1. The state of the Serbs, Croats and Slovenes, who are also known by the name of the Southern Slavs or Jugoslavs, will be a free and independent kingdom, with an indivisible territory and a single allegiance for the three co-national groups. This state will be a constitutional, democratic and parliamentary monarchy, with the Karageorgevitch dynasty, which has always shared the ideals and feelings of the nation in placing above everything else the national liberty and will." "9. The territory of the Serbs, Croats and Slovenes will comprise all the territory where our nation lives in compact masses and without discontinuity, and where it could not be mutilated without injuring the vital interests of the community. Our nation does not ask for anything that belongs to others and only claims what belongs to it. It desires to free itself and to to establish its unity. That is why it conscientiously and firmly rejects every partial solution of the problem of its freedom from Austro-Hungarian domination and desires a union with Serbia and Montenegro into one single state."

The union of Bosnia and Hertzegovina with Serbia and Montenegro would create no racial difficulty, since the population of the two countries is entirely Serbo-Croatian. In Dalmatia the Serbo-Croats number 600,000 in a population of 675,000. Italy's earlier claim,

abandoned in May, 1918, extended over the part of the province north of Spalato and would have hampered the use of that port by the Serbian hinterland. In Croatia-Slavonia the Slav population dominates to the extent of over ninety per cent. The two divisions of the united kingdom constitute together a single branch of the Slavonic race, and while they have been politically separated for over a thousand years their literary language and most of their customs have remained the same, being nearly identical with the language and customs of Serbia. In Carniola the Slovene population forms a solid block. Italy's claim to the southeastern part had no sound ethnological basis to rest upon, and could only have been justified on grounds of strategic defense and economic control.

More debatable is the claim of some supporters of the proposed state to parts of Carinthia, Styria, Küstenland, and the Hungarian districts of Baranya, Batchka, and the Banat. In Carinthia the Slovenes form only one-sixth of the population, and are grouped chiefly in the southeastern corner of the province. In Styria they form approximately one-third of the population inhabiting the section south of the Drave river. In both cases it might be possible to draw a line which would include these Slovene communities in the new state without encroaching upon the dominant German elements; but it is not to be assumed offhand that all such minorities would desire the alteration of traditional administrative boundaries where they have shared in the privileges of the dominant group. In the Küstenland the conflict is between the Slavic and the Italian elements. In Goritz the Italians extend on the east as far as the Isonzo and north as far as Cormons, with a majority of Slovenes in the district as a whole. In Istria the Slovene population forms approximately sixty per cent as against forty per cent Italian, the Italians being grouped on the western coast. In neither case was the Italian claim to the whole of the country justifiable on national grounds; and under the agreement of April, 1918, it would seem not too difficult to draw a satisfactory line between the claims of the two nations. In Trieste the Italian population is estimated at sixty-six per cent, but by reason of its economic importance to the country lying north and west of it the proposal that it should be internationalized has met with some favor.

The right of Jugoslavia to the Hungarian districts north of the Danube and the Drave is upheld by one Jugoslav writer upon grounds other than those of nationality. In his volume on *South-Eastern Europe* Mr. V. R. Savič goes so far as to say that "without the South-

ern Slav provinces in South Hungary, Serbia would be unable to build her future prosperity on a sound basis. Baranya, Bačka, and the western Banat represent the provinces which have suffered least from the war, and being the rich granary they are, they can economically and financially enable the future Southern Slav state to weather the fearful economic crisis which surely will rage in Europe as the inevitable result of the present war. Besides that, the Serbian provinces in South Hungary protect Serbia from an invasion from the north and cover Belgrade from a sudden and direct attack." Moreover, "some rectification of the frontier" between Serbia and Greece appears necessary because "the development of the future Southern Slav State is not to be thought of without a free access to the Ægean. Salonica by its mixed population of Greeks, Turks, Jews and Slavs belongs to none of them ethnographically, but geographically and economically Salonica belongs to Serbia."

If such considerations are to dictate the drawing of new boundary lines at the peace conference, we shall be but repeating the mistakes of the congresses of Vienna and of Berlin and sowing the seeds of future wars. Serbia has suffered, indeed, from the exposed situation of its capital and from its lack of a commercial highway to the sea; but there are other ways in which a League of Nations may satisfy those needs than by attempting to make each state strong within its own borders at the cost of creating new rivalries between neighboring states. In the Balkan peninsula where racial discords between subject nationalities have been fomented for centuries by the governments in control, it is scarcely to be hoped that permanent peace can be introduced without removing the debatable areas from the conflict of national claims by some form of international guarantee protecting the rights of minorities and the common use of important trade routes. National exclusiveness must be replaced by federal coöperation.

BOOK REVIEWS

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American Negro Slavery. A Survey of the Supply, Employment and Control of Negro Labor as Determined by the Plantation Régime. By Ulrich Bonnell Phillips, Ph.D., Professor of American History in the University of Michigan. (D. Appleton and Company. 1918. Pp. ix, 529.)

Mr. Phillips' work is not a history of American slavery but an economic study of American slaveholders and their land and crops. As such it gives evidence of wide reading and knowledge of the facts. Two hundred of its five hundred pages are mainly historical, treating of Africa and the slave trade and West Indian and American conditions. Two hundred other pages contain a series of essays on aspects of slavery—the cotton crop, plantation economy, etc. The other chapters are devoted to freedom and crime among slaves and slave codes.

Mr. Phillips was born and lived in earlier life on a Southern plantation (p. 313, note), and bases some of his information on this experience. To this he had added a knowledge of the standard authorities like Helps, Hakluyt, Nieboer, Kingsley and Ellis, and the less well-known Saco and Scelle. He has made wide use of southern newspapers and pamphlets and some manuscript materials, but has done little with any Negro sources most of which he regards as "of dubious value" (p. 445, note).

The result is a readable book but one curiously incomplete and unfortunately biased. The Negro as a responsible human being has no place in the book. To be sure individual Negroes are treated here and there but mainly as exceptional or as illustrative facts for purposes outside themselves. Nowhere is there any adequate conception of "darkies," "niggers" and "negroes" (words liberally used throughout the book) as making a living mass of humanity with all the usual human reactions.

This intrigues the reader, for a history of slavery would ordinarily deal largely with slaves and their point of view, while this book deals chiefly with the economics of slaveholders and is without exception from their point of view. Its thesis is that slavery was an ordinary human labor problem not unlike that of modern factory labor. It had little to do with humanity, and even its sufferings were not different from the ordinary hardships of laboring people (pp. 52, 181, 182, 307).

This thesis, however, encounters the difficulty that most writers, even of the ultra-economic sort, have regarded slavery as a peculiar sort of labor problem because of its degradation of the laborer and the reflex action of this on the master class. Mr. Phillips sees this difficulty and notes the horrors of the Roman *latifundia* and Cato's code (p. 341); but he surmounts the difficulty by two premises, nowhere clearly stated, but always implicit in his narrative. The unstated major premise is that Negroes were not ordinary slaves nor indeed ordinary human beings. "The heartlessness of the Roman *latifundiarii* was the product partly of their absenteeism . . . . and partly of the lack of difference between masters and slaves in racial traits. In the ante-bellum South all these conditions were reversed."

Mr. Phillips recurs again and again to this inborn character of Negroes: they are "submissive," "light-hearted" and "ingratiating" (p. 342), very "fond of display" (pp. 1, 291), with a "proneness to superstition" and "acceptance of subordination" (p. 291); "chaffing, and chattering" (p. 292) with "humble nonchalance and a freedom from carking care" (p. 416). From the fourteenth to the twentieth century Mr. Phillips sees no essential change in these predominant characteristics of the mass of Negroes; and while he is finishing his book in a Y. M. C. A. army hut in the South all he sees in the Negro soldier is the "same easy-going amiable serio-comic obedience," and all he hears is the throwing of dice (pp. viii, ix). This Negro nature is, to Mr. Phillips, fixed and unchangeable. A generation of freedom has brought little change (p. ix). Even the few exceptional Negroes whom he mentions are of interest mainly because of their unexpected "ambition" and not for any especial accomplishment (p. 432). The fighting black maroons were overcome by "fright" (p. 466), and the Negroes' part in the public movements like the Revolution was "barely appreciable" (p. 116); indeed his main picture is of "inert Negroes, the majority of whom are as yet perhaps less efficient in freedom than their forbears were as slaves" (p. 396)!

Having now rather by innuendo and assumption than by dogmatic statement established these subhuman slaves Mr. Phillips, by a similar method, evokes the slaveholding superman.

Slavery, we are told, (p. 401) was "less a business than a life; it made fewer fortunes than it made men." Life among Negro slaves "promoted, and wellnigh necessitated the blending of foresight and firmness with kindliness and patience" (p. 287). In fact the slave system was "analogous in kind and in consequence to the domestication of the beasts of the field" (p. 344). With such masters, Mr. Phillips finds the treatment of slaves on the whole excellent. He notes the "interest of the master in the future of his workers" (p. 357). The surviving vestiges of slave quarters prove how comfortably they were housed (p. 298). Planters had to "guard their slaves' health and life as among the most vital of their own interests" (p. 301), and the tradition of the mistreatment of slaves in the southern South were simply spread by border state masters "in the amiable purpose of keeping their own slaves content" (p. 305).

"There was clearly no general prevalence of severity and strain in the régime" (p. 307). "The generality of the Negroes insisted upon possessing and being possessed in a cordial but respectful intimacy" (p. 307). White and black children were playmates; returning masters had their hands and feet kissed; and the result of the whole system was no fatigue or overwork, as the "sturdy sleekness as well as the joviality" of most of the slaves proved (p. 384). Slaves were rarely sold by a master (p. 397), and if hired out their masters were most solicitous for their "moral and physical welfare" (p. 410). Among town slaves there was "much comfort and even luxury" (p. 424).

The author quotes some cases where this idyllic picture seems a bit beside the truth, but he immediately marshals overwhelming witnesses to the contrary. As for instance, on page 251, he gives two inches to Fannie Kemble's picture of a wretched plantation, and follows it with three pages of contradicting testimony. The various severe indictments of certain aspects of slavery Mr. Phillips touches lightly but surely. The breaking up of families by sale is dismissed by the statement that slave owners "deplored" it (p. 202). Breeding for the domestic slave trade is dismissed as "extremely doubtful" (p. 362). Concubinage and illicit intercourse between master and servant receive but passing mention. Fugitive slaves are camouflaged as "truants." As for overwork, "anyone who has had experience with Negro labor may reasonably be sceptical when told that healthy, well-fed Negroes, whether

slave or free, can by any routine insistence of the employer be driven beyond the point at which fatigue begins to be injurious" (p. 384).

After having painted this picture of the slave régime, Mr. Phillips is too logical a thinker not to see that he has overshot his mark for the ugly fact remains that this institution of born slaves, kindly masters, and favorable conditions in crops was a tragic economic failure. Why was this? It was not, Mr. Phillips assures us, because of any especial moral delinquency of the South and he uses the *Tu quoque* argument against New England abolitionists and English philanthropists with inspiring if not convincing keenness, even to the extent of making Oglethrope "the manager" of the Royal African Company. He finds Cairnes' stinging indictment of the slave barons full of "grotesqueries" (p. 356). He attacks Loria's socialistic explanation of the overvaluation of slaves as a "fallacy;" and finally he, himself, explains the economic failure of slavery as chiefly due to the fact that "the routine efficiency of slave labor itself caused the South to spoil the market for its distinctive crops by producing greater quantities than the world would buy at remunerative prices. To this the solicitude of the masters for the health of their slaves contributed" (p. 398)!

Mr. Phillips elaborates this thesis and also offers other and apparently contradicting explanations; on the whole this is by far the weakest part of the book and leaves the reader much befogged.

The last chapters come as more or less illogical addenda to the main thesis. Under "Town Slaves," the servant problem of the whites is mainly treated. Under "Free Negroes," we are told of some slaves who won deserved freedom and of others who tasting freedom returned to the beloved plantation. Slave crime includes the stories of such "criminals" as Denmark, Vesey and Toussaint L'Overture; and the treatment of slave codes shows, according to Mr. Phillips, that "the government of slaves was, for the ninety and nine, by men, and only for the hundredth by laws. There were injustice, oppression, brutality and heartburning in the régime—but where in the struggling world are these absent? There were also gentleness, kind-hearted friendship and mutual loyalty to a degree hard for him to believe who regards the system with a theorist's eye and a partisan squint" (p. 514).

On the whole this book, despite its undoubted evidence of labor and research, its wealth of illustrative material and its moderate tone, is deeply disappointing. It is a defense of American slavery—a defense of an institution which was at best a mistake and at worst a crime—made in a day when we need sharp and implacable judgment against

collective wrongdoing by cultured and courteous men. The case against American slavery is too strong to be moved by this kind of special pleading. The mere fact that it left to the world today a heritage of ignorance, crime, lynching, lawlessness and economic injustice, to be struggled with by this and succeeding generations, is a condemnation unanswered by Mr. Phillips and unanswerable.

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American Civil Church Law. By CARL ZOLLMANN. (Columbia University Studies in History, Economics and Public Law, LXXVII. New York: Longmans, Green and Company. 1917. Pp. 473.)

The fact that in the United States there is the most complete separation of church and state, that our governments—national, state, and local—not only do not exert any direct control over religious institutions but also are forbidden to subsidize or support them, may lead the layman to wonder how there could be any considerable body of jurisprudence which could properly be called American civil church law. Perhaps this is the reason why Mr. Zollmann's book is the first comprehensive treatment of the numerous and fascinating legal problems which have arisen in connection with the American church. It certainly fills an important gap in our legal literature.

In his preface Mr. Zollmann has indicated, with a precision which characterizes the book throughout, the field which he intends his study to occupy. "It deals with *American* law and not, except incidentally, with English statutes and cases. It is confined to *Civil* law applicable to churches as distinguished from any merely ecclesiastical rules of conduct. It is concerned with *Church* law in the sense that it sets forth the various matters as to which church and state come into contact. Last but not least, it seeks to state the *Law*, in its present condition and underlying reason, and is not content to be a mere digest of the reported cases."

The first of the seventeen chapters comprising the volume treats of religious liberty. It is shown that freedom of religion in this country cannot be used as a defense of criminal acts, that the law tacitly recognizes the Christian religion as the prevailing religion, that it fosters religion by incorporating churches, protecting their worship from disturbance, exempting their property from taxation, and compelling

people to desist from work on Sunday. The law has tried to be a friendly neutral but has not always managed to maintain strict neutrality.

Three chapters deal with the forms, nature, and powers of church corporations. These corporations range from the democratic form of corporation aggregate to the monarchical corporation sole, with the trustee corporation serving as a sort of compromise form between. These corporations are all merely business agents of the church, and the law has usually placed restrictions upon their power to acquire and dispose of real property and to make contracts. The chapters on church constitutions (Ch. v), schisms (Ch. vii), and church decisions (Ch. viii) deal with legal problems affecting the internal government and authority of American churches. The discussion of church decisions leads the author into a detailed examination and vigorous criticism of the decision of the United States Supreme Court in the case of Watson v. Jones (80 U. S. 679), to the effect that the decrees of church tribunals are conclusive even though such tribunals have actually exceeded their power, inasmuch as our doctrine of religious liberty precludes the review of such decisions by the courts.

The sixth chapter deals with the problem of implied trusts and sets forth the contradictory views of our courts on the question whether a general gift to a religious society creates an implied trust of a charitable nature. In Chapter ix, there is an extended discusson of tax exemptions enjoyed by religious organizations. The author concludes that these exemptions have persisted after the original reason for them has disappeared. He discusses the types of church property to which the exemptions may be applied. There is a valuable consideration of the offense of disturbance of religious meetings in Chapter x. There are chapters devoted to church contracts (Ch. xi), dedication and adverse possession (Ch. xiv), pew rights (Ch. xv), and church cemeteries (Ch. xvi); while the position, powers, duties, and liabilities of clergymen and church officers are set forth in Chapters xii and xiii, respectively. A final chapter discusses at length the character and legal effects of the peculiar trust deed under which property is commonly held by the Methodist Episcopal Church.

Mr. Zollmann has done something more than enumerate the decisions of American courts upon the many important problems he considers. Those decisions are analyzed, criticized and interpreted, and at the close of each chapter a brief summary states in concise form the important doctrines of law which have been enunciated and the author's

conclusions regarding them. The treatment throughout is marked by clarity and precision of expression and is nontechnical in spite of the technical character of many of the problems treated. An adequate index adds to the value of the book.

The author has succeeded in producing a volume which should prove of real value to the student of both private and public law as well as to the clergyman and the officer charged with administering the business interests of religious societies.

ROBERT E. CUSHMAN.

University of Illinois.

The Law Relating to Trade with the Enemy together with a Consideration of the Civil Rights and Disabilities of Alien Enemies and of the Effect of War on Contracts with Alien Enemies. By CHARLES HENRY HUBERICH, J.U.D., D.C.L., LL.D., of the United States Supreme Court Bar. (New York: Baker, Voorhis and Company. 1918. Pp. xxxii, 485.)

This is a book of the type much needed at the present time. Though primarily intended for jurists and attorneys, it will also prove highly useful to students of international law and the great war. The work is primarily a commentary on the trading with the enemy act, passed by Congress on October 6, 1917, but it also includes a consideration of the law relating to the rights and disabilities of alien enemies, as also of the effect of war on contracts.

In the "Introduction" the author contrasts the two opposing theories (Anglo-Saxon and Continental) as to the effect of war on the private citizens of an enemy state, outlines the views of jurists on the legality of trading with the enemy, and reviews the legislation of the leading belligerents.

In the midst of a war characterized chiefly by German brutality and excesses, it is a relief to learn that Germany forms an exception to the general prohibition of trading with the enemy and that "contracts not involving the transmission of moneys or securities during the war are valid. Furthermore, alien enemies are not under special disabilities as parties to judicial proceedings. The law accords them a *locus standi in judicio* both as plaintiffs and defendants in the ordinary courts as well as in the prize courts, and this regardless of their place of domicile or residence" (p. 15).

The German imperial supreme court, in a decision rendered during the present war, has even declared: "German international law does not adopt the views of certain foreign systems of law: that a war is to be conducted so as to produce the greatest possible economic loss to the subjects of the enemy state, and that these subjects, therefore, are in a large measure to be deprived of the benefits of the general law governing civil rights. On the contrary, it adopts the principle that war is waged only against the enemy state as such, and against its armed forces, and that the subjects of the enemy state as regards civil rights are in the same legal position as before the war, except in so far as legislation may create exceptions."

Shades of Clausewitz, von Moltke, and von Hartmann! Be not offended. For the above judicial utterance seems to be nothing more than the harmless statement of a mere principle, such as German jurists and philosophers are fond of enunciating. The imperial German government, since the outbreak of the war, has promulgated a long series of acts which make it extremely difficult and hazardous for enemy aliens to do business with Germans or to retain in their possession anything which these disciples of Rousseau can seize, sequester, or confiscate. As the German imperial court, cited above, puts it: "This principle [of equality of the civil rights of alien enemies] does not preclude the adoption of special laws, as has been frequently done during the present war, especially by way of retaliation, prescribing a different treatment of enemy subjects."

The body of the work under review consists of a commentary on the trading with the enemy act, which seems to be as thorough, accurate, and exhaustive as it could well be made. Each important phrase, reference and topic is subjected to careful scrutiny, commentary and analysis, including ample discussion, explanation, references and citation of cases from British as well as American sources. This commentary should furnish to judges and practitioners at the bar all the material which they can possibly need in the trial and conduct of cases arising under the application of this act. The texts of the various trading with the enemy acts passed in the British Empire together with the executive order of October 12, 1917, are printed in the Appendix. The volume also contains a table of cases and a good index.

AMOS S. HERSHEY.

Les Institutions Politiques de l'Allemagne Contemporaine. By JOSEPH-BARTHÉLEMY, Professeur Agrégé à la Faculté de Droit de Paris, Professeur a l'École Libre des Sciences Politiques. (Paris: Librairie Félix Alcan. 1915. Pp. 267.)

This little book by a distinguished French scholar contains what is probably the most incisive analysis of the real German government that has been published. It demonstrates in an admirable degree how impossible it is to gain an adequate knowledge of the actual character of the government and political institutions of a country from a mere study of the formal texts of laws and constitutions. Professor Barthélemy goes back of the written constitutions of the German Empire and of the states which compose it and gives us a picture of the government as it actually is and as it works in practice. In successive chapters he shows: (1) that neither the imperial government nor those of the states are truly democratic; (2) that there is no true constitutional régime in Germany; (3) that the parliamentary or cabinet system has no existence either in the imperial organization or in those of the states; and (4) that the Germans are really not a free people.

As evidence of his first proposition he shows how, by means of the three-class system of suffrage, the high age qualification for voting, the exclusion of persons who receive public relief, the system of weighted voting, the holding of the elections on week days, the archaic system of open public voting and the gross inequality of electoral districts—political power is kept in the hands of the wealthy classes. Many interesting statistics are produced to show how grossly unfair and undemocratic the whole system is in practice. There is no true constitutional government in Prussia, he says, because the constitution was not made by the people and such limitations as it imposes upon the government are not enforceable. There is no parliamentary régime because the ministers are merely the creatures, agents and instruments of the crown, and are not responsible to parliament for their political acts or policies. Under the peculiar doctrine which prevails in Germany regarding the nature of the budget the legislature does not even have control over appropriations and expenditures. Finally, there is no liberty in Germany, as the term is understood in other countries. The liberty of the press is reduced to a sham by the doctrine of *lèse-majesté*. The liberty of meeting is similarly restricted by the famous *sprachen paragraph* in the law of assembly which requires the proceedings of all public political meetings (except during the electoral period) to be conducted

in the German language, the effect of which is virtually to prohibit such meetings in Poland, Alsace-Lorraine and Schleswig-Holstein. There is no freedom of teaching since private schools are hardly tolerated. In 1911 there were only 480 such schools in all the empire.

Altogether, M. Barthélemy's analysis of German political institutions is both interesting and convincing. It ought to be translated into English and made available for the use of American students generally. It contains evidence in abundance to substantiate the frequent charges made by President Wilson in his addresses that the real German government is an autocracy and that the Prussian is "a natural enemy of liberty."

JAMES W. GARNER.

University of Illinois.

The French Assembly of 1848 *and American Constitutional Doctrines.* By EUGENE NEWTON CURTIS, Ph.D., Assistant Professor of Modern European History at Goucher College. (Columbia University Studies in History, Economics and Public Law, LXXIX, No. 2. New York: Longmans, Green and Company. 1918. Pp. 357.)

This book in the main represents an attempt to trace the influence of American institutions and political ideas upon the French between 1789 and 1850, and especially upon the framers of the republican constitution of 1848. As a sort of background for his study the author starts out with an introductory chapter on Europe and America in 1848 in which he contrasts the political and economic conditions of the United States and France and attempts to evaluate the influence of the American Constitution upon France prior to 1848. He admits that Franklin (who had a collection of American constitutions published in France), Jefferson, and especially Lafayette exerted some influence upon the early constitutional development of France; but his conclusion that American influence was very slight is probably a sound one. Between 1830 and 1848, however, this influence was more marked. Coming to the revolution of 1848 and the work of the national assembly which framed the constitution of that year, the author calls attention to the sympathy which the establishment of the republic elicited in America as shown by the congratulatory resolutions passed by both houses of Congress, the adoption of addresses of felicitation by various bodies and the frequent references in Fourth of July orations of that year to the overthrow of the

monarchy and the setting up of the republic in France. It may also be remarked that the Democratic national convention which nominated Cass for President in 1848 adopted a long resolution congratulating the French upon the establishment of republican institutions.

There is evidence also of an awakened interest among the French in the American Constitution. De Tocqueville's *Démocratie en Amerique* was more widely read than ever, collections of American constitutions were now published in French, newspaper articles summarizing and discussing the American Constitution were common, and some new books dealing with American institutions appeared at this time, the most notable being Chevalier's *Études sur la Constitution des États-Unis*, originally published as a series of articles in the *Journal des Débats*. Naturally not all the newspaper discussion of the American Constitution was favorable. The legitimist press was generally anti-American, and it protested against the idea of the French imitating the Americans. In the debates of the national assembly there were frequent references to the American Constitution—at least thirty the author says,—and especially during the discussion of the presidency and the question of a second chamber, American example was often cited.

The general conclusion of the author is that American influence upon the assembly was slight. A comparison of the French constitution of 1848 with that of the United States suggests, he says, certain analogies but in many cases the resemblance was accidental. If American example exerted any influence at all, it was upon those provisions dealing with the presidency and possibly the bicameral structure of the legislature. As stated above, the legitimists were strongly opposed to American example in any form; the former Orleanist party, however, felt much more sympathy for it.

JAMES W. GARNER.

University of Illinois.

Diplomatic Documents Relating to the Outbreak of the European War. Edited with an introduction by JAMES BROWN SCOTT, Director of the Division of International Law, Carnegie Endowment for International Peace. Two volumes. (New York: Oxford University Press. 1916. Pp. lxxxi, xcii, 1516.)

Although more attention is now being directed to problems of reconstruction after the war than to the causes which led up to it, the latter nevertheless will always constitute an important and interesting study.

In spite of the large number of books which have been written about the causes of the war, the most indispensable source of information on this subject naturally consists of the official books of variegated colors issued by the different governments explaining their several entrances into the conflict. These documents are of permanent interest not only from the standpoint of the history of the particular events to which they relate, but also from that of the study of the pyschological attitudes of the nations concerned to questions of peace and war. In the two large volumes under notice, these official documents are reprinted, in English translation where necessary, in a permanent and even sumptuous form. Their usefulness is enhanced by an introduction, a list of the principal persons mentioned in the correspondence with their official positions, an analytical table of contents and a copious index. In the list of principal persons prefixed to each volume, the name of Prince Lichnowsky, German Ambassador at London, is, in each case, misspelled. On the whole, however, the typographical work is excellent and the editing carefully done.

J. M. MATHEWS.

University of Illinois.

The Structure of Lasting Peace. By H. M. KALLEN, Ph.D., Professor of Philosophy, University of Wisconsin. (Boston: Marshall Jones Company. 1918. Pp. xv, 187.)

Confronted by a dilemma in which sovereignty is the menace as well as the security of minority nationalities, the author would destroy both the menace and the need of security by abolishing national sovereignty. Let the state become simply the corporate administrator of political affairs for all of its component nationalities, each having an equal voice on the directoral board. Nationality has no more necessary or fortunate connection with the state than religion; its dis-association therefore will make the state the guarantor of national as it has of religious freedom. President Wilson's "League to Enforce Peace" will be the repository of sovereignty, guaranteeing "an open way for the spontaneous powers and happiness of nationalities."

Mr. Kallen sets forth in brilliant fashion the case of the theorists for the "League;" and one would not quarrel with his principles nor with many of his practical suggestions, particularly that upon which he lays chief emphasis—autonomous, unprejudiced education. His proposal to make the International Congress court as well as legislature is defec-

tive; he does not attempt to discuss an executive. He leaves solid ground in his categories of those who have tried to govern and have failed: "*Realpolitiker*" like Mr. Root, "bitter-enders" like Bolo Pasha and Mr. Roosevelt, "dickering diplomats," professors and practitioners of international "law," writers for the "kept press." The Sidney Webbs, the Lowes-Dickinsons, the Norman Angells, the Lenines, the Trotskys, the David Starr Jordans should control the coming peace conference, though "experts" may be needed to devise a plan for the representation of nationalities, experts, perhaps, of the type of the "demi-gods" who wrote the Constitution of the United States and whose lasting success affords the author a useful analogy upon which to base his hope of a permanent federation of the world.

HAROLD SCOTT QUIGLEY.

France, England and European Democracy, 1215–1915. By CHARLES CESTRE. Translated by Leslie M. Turner. (New York: G. P. Putnam's Sons. 1918. Pp. xx, 354.)

It was hardly necessary to disguise M. Charles Cestre's interesting monograph of 1916 *L'Angleterre et la Guerre* under such a high sounding and misleading title. The study is primarily devoted to England and English foreign policy in relation to her past and present. France and Germany are subsidiary. Towards the former with her ideals of equality, England with her ideals of liberty is attracted while German "state-ism" repels her. There is nothing at large on European democracy and the dates 1215 to 1915 are quite misleading as to the scope and character of the book.

M. Cestre is well-known as a specialist in the history of English literature to which he has made some valuable contributions. In the present volume he deserts that field to attempt an interpretation of English nationalism and imperialism in the light of the present war. His object is to show why England is a natural ally of France against Germany. Having established the viewpoint of an alliance based on a nearness and sympathy of ideals, the author devotes four chapters to a general survey of English foreign policy from 1588 to 1914. Then follows a very brief discussion of "England the Mother of Liberty (1215–1815)" which contains a number of questionable statements on English constitutional characteristics and growth. The next chapter is a study of English individualism in contrast with German "state-ism" and contains a vigorous denunciation of the Social Democrats of Germany and a com-

mendatory analysis of the social philosophy of H. G. Wells. A long chapter follows on British imperialism and empire in which that brand of imperialism is given a clean bill of health from 1787 to the present. Union imperialism is especially praised and the loyalty of the great self-governing colonies or dominions is noted. Brief discussions of the manifestation of the modern English spirit in the customs and literature of England today and a concluding chapter on "What the English have done. What they are doing," round out a very timely and interesting volume of essays.

On the whole M. Cestre's volume is retrospective rather than prospective in its analysis and viewpoint. He is clearly an advocate of bourgeois political democracy and an admirer of individualism. He looks backward rather than forward and there is a noticeable lack of constructive economic and social thought in his discussions. The volume is not so patently diplomatic as Tardieu's *France and the Alliances*, nor so historical and political as M. de Lanessan's recent publication entitled *Histoire de L'Entente cordiale franco-anglaise* (1916), with which it might be associated. The translation has been done with care, though in the case of a few place-names like "Venetia," which is spelled "Venitia," there are slips.

NORMAN M. TRENHOLME.

University of Missouri.

An Outline Sketch of English Constitutional History. By GEORGE BURTON ADAMS. (New Haven: Yale University Press. 1918. Pp. 201.)

In two hundred small pages Professor Adams has given us a ripe and masterly survey of the essential, outstanding features in the growth of that body of law and custom which make up the English constitution. "I have tried to keep in mind in writing," he says, "chiefly the desire to show how modern history came to be what it is and what foundations our institutions have in the past history of the race." Realizing fully the difficulties of his task, he proceeds to forestall any captious critics by admitting frankly that he has "left out many things which other students of the English constitution will think should be found here." The work is at once a summary of the findings of scholars—among which those of Professor Adams himself have a significant place—stated in terse, individual fashion, and an illuminating series of interpretations.

The essay is so condensed that it is both difficult and unnecessary to instance many of the numerous suggestive contributions. Among the few which might be singled out are: the excellent distinction drawn between the great and the small councils (p. 25); the pages on the true significance of Magna Charta (pp. 45 ff); the sane discussion of royal and parliamentary precedents under the Stuarts (pp. 113–114); and, most particularly, the insistence on the fact (pp. 2 ff and 144) that the widespread adoption of the English model in Continental countries is due, in no small degree, to the compromise by which the monarch has been retained in an essentially democratic system.

Inevitably, there are points to which some, including the reviewer, might take exception, or which, at least, he would have stated differently. For example, the responsibility of ministers as a distinguishing feature of the English and German systems might have been more heavily stressed (p. 3); possibly it would be better to speak of a "people" rather than a "race" as a mixture of races (p 5); and, apparently, Professor Adams is willing to go further than many scholars with Riess and Pasquet in minimizing taxation as a factor in the growth of Parliament (pp. 62 ff). Actual slips are few; however, Edward I had preceded Edward III in laying excessive taxes on wool (p. 71); surely, the house of lords did not reject the Reform Bill of 1832 three times (p. 183); and the statement as to the Parliament Bill of 1911 (p. 185) is not strictly correct.

While this little book will prove most helpful and stimulating to teachers and others already familiar with the subject, it is to be feared that it may be too abstract and elusive in many places for those lacking a good background in English history. Hence, it is to be hoped that Professor Adams may soon produce a larger work on the same subject illustrating his general principles with more amp'e details.

ARTHUR LYON CROSS.

University of Michigan.

Norman Institutions. By CHARLES HOMER HASKINS. (Cambridge: Harvard University Press. 1918. Pp. x, 377.)

During the past fifteen years there has been published at intervals in the *English Historical Review* and in the *American Historical Review* a series of brilliant studies in the institutional development of Normandy in the eleventh and twelfth centuries. The author, Professor Charles H. Haskins, has long been interested in Norman history and has prob-

ably explored the documentary sources of the great duchy more widely and thoroughly than any other living scholar. These studies, in revised and expanded form and with a considerable body of new materials added, have now been collected into a volume under the title of *Norman Institutions*. The work begins with a survey of the administrative system of William the Conqueror and traces the institutional changes and progress to the death of Henry II. A separate chapter is given to the history of the early Norman jury. A noteworthy and important part of the volume is a series of eleven appendices devoted chiefly to a critical discussion of the sources for the period under review. Seven interesting plates showing facsimiles of Norman documents, most of them antedating 1066, complete the volume.

Though Professor Haskins' work is primarily a contribution to the history of Normandy, it has an added importance in the light that his researches throw on certain difficult problems of English constitutional history. The author finds that the English kingdom and the Norman duchy developed in administrative matters along parallel lines; that in some respects the English influence was important; but that more often institutional changes appeared in Normandy before they took root in England. Professor Haskins cites his evidence quite freely in the text as well as in the footnotes. His conclusions are stated with characteristic caution. The task of measuring the influence of the Normans on English institutions he leaves to the student of English constitutional history, of whom he asks merely "that he proceed with due regard to the interaction of Normandy and England during the union which continued with scarcely an interruption for nearly a century and a half."

L. M. Larson.

University of Illinois.

The State Tax Commission. By Harley L. Lutz. (Cambridge: Harvard University Press. 1918. Pp. ix, 673.)

This book deals in a thorough and comprehensive manner with one of the most significant of recent movements in state tax administration. As a background for the development of the main subject matter, the author points out the familiar defects and shortcomings of the general property tax and then devotes considerable space to showing the ineffectiveness of the old-style state board of equalization in remedying these defects. There follows a general chapter on the "Organization and Equipment of the State Tax Department," and in succeeding chapters a

more detailed study is made of the various state tax commissions having supervisory powers over local assessments. The work, submitted originally as a doctoral dissertation at Harvard several years ago, subsequently revised, and awarded the David A. Wells prize, shows evidence of a wide knowledge of both the literature and the practical aspects of the subject and of a painstaking care in preparation. A useful classified bibliography is appended to the volume.

The author is a strong advocate of centralized control in tax matters, though he at the same time utters a warning against "excessive bureaucratic centralization of the responsibilities of democracy" (p. 638). Some persons might be inclined to dissent from the author's preference for the board plan as compared with the single commissioner (p. 134), and from his implied disapproval of the unchecked power of the governor to remove his subordinates and appointees (p. 136). His statement (p. 76) in regard to the "Committee on Revenue and Finance Administration" of Illinois has reference apparently to the efficiency and economy committee of that state. These, however, are comparatively trivial matters. On the whole, Professor Lutz has made a substantial contribution to the subject, for which all students of state taxation should be grateful.

J. M. MATHEWS.

University of Illinois.

Socialism and Feminism, with an Introduction on the Climax of Civilization. By CORREA M. WALSH. Three volumes. (New York: Sturgis and Walton Company. 1917. Pp. x, 150; viii, 518; vi, 393.)

The thesis of the study under review can be briefly stated, although for its complete exposition and elaboration three volumes were found necessary. Human progress moves in cycles, and our present civilization is near the climax of one of these cycles. But it is threatened with disintegration and decline, especially from two present day movements, namely, socialism and feminism. It is the mission of this work to warn against the impending dangers and to prove both the impracticability and unjustifiability of these schemes. This task is evidently a congenial one with the author and he performs it with thoroughness, erudition, and, one may add, relish.

Civilization, says Mr. Walsh, rests upon friendly collaboration and upon competition. The first is all essential in the early stages of human

progress, but as civilization advances the other factor becomes more important. Further advance is made by striving and competition, not only between individuals but between different states. This leads to the success of some, but in time these leaders prefer peace and enjoyment and degeneration ultimately sets in which brings disintegration. An illustration may be seen in politics. During the early ascending stages of a cycle in human progress and in part of the culminating period, the upper classes rule. But, their work accomplished, they become slothful and the rule of the masses begins. When this is carried to its logical conclusion in socialism the decline is inevitable and swift. It is impossible for a society to remain indefinitely at the apex, for the causes of decay inhere in the very success of the upward movement; they are material, moral, social, and economic. We occupy today about the same position as Athens in the fifth century, B.C., or as Rome in about the first century, and the ultimate decline of our present civilization is as inevitable as was theirs.

To this unhappy consummation socialism is one of the chief contributing factors, for its realization would lead to deterioration, disintegration, and impotency. Competition would necessarily cease and the present methods of industrial and social selection of the more fit would disappear; equality would mean stagnation and decay. The weakening process would be hastened by the disintegration of the family; over-population would swamp the socialist state, unless scientific human breeding were introduced, which is unlikely. Without wasting much space on argument as to its merits, the author next asserts the impracticability of socialism as a scheme of production. Why then does anybody desire so impracticable and deteriorative a system? "Because its advocates have a notion that it will, at least at first (for they do not look far ahead), be better for themselves or for most people than are present conditions, and moreover because they think it is demanded by justice."

In spite of his dislike of socialism the author admits the existence of evils in the present industrial system, which, however, he thinks it unlikely that we can cure. Reform is needed, but prosperity makes us apathetic; the holders of privilege are united and the reformers are divided. Consequently civilization will inevitably go to destruction—or to socialism, which is the same thing—unless we heed the timely warning now given, and bestir ourselves.

Bad as all this is, the real canker in the flower of our present civilization, which is hastening its demise, is feminism. This is the logical consummation of socialism. Woman's demand for equality with man is as

impossible as the socialists' demand for industrial equality. To the author feminism apparently means any deviation from the existing order; and in successive chapters on feminism and marriage, feminists' demands, women and work, and woman suffrage, the demands of the modern woman for social, economic, and political reform are shown to be destructive or unworkable. Beneath both socialism and feminism he contends there is a new morality of sentiment, which strives to replace the Puritan ideal of duty, substituting selfishness and ease for the spirit of self-sacrifice and willingness to assume obligations. Both lead to social demoralization.

The author has apparently written in a spirit of earnest conviction, and fortifies his conclusions with references that range from Plato to the latest newspaper clipping. But one is inclined to believe that he reached his conclusion first and did his reading afterward. Two frightful bogeys are created which are to be held responsible for all our ills. But this is to lack historical perspective and to exhibit a degree of prevision which few have shown since the days of the Old Testament prophets. If the author is an oracle, he certainly ranks with Jeremiah as a prophet of evil. Nor are the assumptions of the socialists or feminists more extreme than his own premises. His logic is meant to be rigid, but the attribution of "deterioration" or "demoralization" not infrequently serves as sufficient condemnation and renders proof unnecessary. To cite Henry George, himself an extreme individualist, as an illustration of the socialist system of land holdings, would seem to argue a lack of knowledge of the single tax. But Mr. Walsh, the author of an erudite work on the *Theory of General Exchange-Value*, is not lacking in knowledge; rather this must be attributed to his eagerness to prove a point against the radicals of any stripe.

It is a pity that a study which has involved a prodigious amount of work and brings together a mass of information and argument on these subjects should have been printed on such poor paper. But for this, as for so many of our ills at present, the war is probably responsible.

E. L. BOGART.

University of Illinois.

The Science of Power. By BENJAMIN KIDD. (New York: G. P. Putnam's Sons. 1918. Pp. viii, 318.)

This posthumous vo'ume is a stimulating interpretation of the fundamental forces of our time. It is hardly the kind of a work which its

title suggests—a conventional treatment of power released by or expressed through political or social organization. Actually it is a critical comparison of a civilization built upon the Darwinian hypothesis—the doctrine of force and survival—and the possible results or characteristics of a civilization built up by social integration in which the gregarious instinct and social heredity are primary rather than the individualistic impulse of aggression. Heretofore, so says the author, social dynamics or the driving motives of civilization have been misdirected along the channels of war by the spirit of nationality, and along the lines of industrial aggression, exemplified by the forces of capital and labor. The ability to use collective emotion for socialized instead of individualistic ends is the supreme purpose of civilization. Emotion rather than reason is held to be the source of power in life and "the emotion of the ideal is the supreme principle of efficiency in the collective struggle of the world."

The author's distrust of reason as a source of power and his doubts regarding the efficacy of knowledge are expressed in his *Social Evolution* as well as in the present volume. The intellectual factor is held to be of slight, incidental value in the civilizing process. Here a fundamental change of opinions arises with those who believe in the supremacy of intellect. Instinct and instinctive impulses are, to be sure, driving sources of power but the intellectual element of mentality plays a primary part in their expression and outgo. Emotional power, without the intellectual factor in mental activity, is like unharnessed and uncontrolled power in machinery processes. To ignore or undervalue this intellectual factor disregards one of the basic civilizing forces.

Even those who disagree with the conclusions of the author cannot fail to be stimulated and challenged by his treatment of the subject. His interpretation of the failure of Western civilization is done convincingly. His constructive suggestions for the basis of a new social order are less powerful in their appeal; but these, too, are thought-provoking. Its element of stimulus and challenge justifies the work.

JAMES G. STEVENS.

Theories of Social Progress. By ARTHUR J. TODD. (New York: The Macmillan Company. 1918. Pp. xii, 548.)

This book fills a unique and needed place in sociological literature. Scholarly, sane, critical, constructive, with pertinent allusions and quo-

tations that carry one through nearly the whole range of literature bearing on social progress, it is sure to prove of great value to all advanced students of sociology.

Part I is given to a discussion of "Human Nature and Social Progress," and here the author takes his stand with those psychologists who hold that "the self is a function of the will, and is socially determined." "We are a bundle of potential selves," he concludes, "and attain unity through unified activity." In the determination of the self, first place is given to the social environment. "Physical heredity seems to furnish the vase, but social heredity pours in the contents."

In Part II "The Concept of Progress" is discussed, also certain tests that have been proposed, such as increasing population, increasing health and longevity, wealth and the improvement of morals.

Part III is given to "The Prophets of Progress" and their interpretations. The prophets are classified as materialistic, biological, institutional and ideological. In this part his "middle course" policy is especially prominent, "not from a timorous habit of 'playing safe,' but as the result of accepting the challenge of what seems to be fact." The extreme selectionists, eugenists, and racialists are severely criticized; so, too, those who insist on the moral and social value of war.

Part IV is given to "Implications and Conclusions." The outcome of the whole discussion leads the author to emphasize the possibility that society may become a "real *Gesamtpersönlichkeit*," creating and recreating, not only the conditions of social life, but social life itself. This it is to do chiefly by means of social education.

L. M. Bristol.

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In these Latter Days. By Hubert Howe Bancroft. (Chicago: The Blakely-Oswald Company. 1917. Pp. vi, 548.)

The recent death of the author of the present volume at his home in San Francisco has removed a notable figure from the life of the community. His several books have not contributed so much to his reputation as has the great collection of books and manuscripts dealing with Western American history which he made and deposited in the library of the University of California.

The volume under review contains the author's impressions upon a variety of topics touching the political and economic conditions of present day life in the United States. One misses the calm judgments

of scholarly age and finds instead its pessimism and prejudice. The Japanese, the Democratic party and President Wilson seem particularly to call forth the condemnation of the author, and the city of San Francisco is evidently dear to his heart. In justice it should be said that the book was written before the United States declared war, and that its pessimism is moderated by the conclusion that everything is not altogether bad; there is a thin ray of hope in the fact that things are "not so bad as they might be."

EDWARD ELLIOTT.

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Historical Backgrounds of the Great War. By FRANK J. ADKINS. (New York: R. M. McBride. 1918. Pp. 292.)

The Soul of Democracy. By EDWARD HOWARD GRIGGS. (New York: The Macmillan Company. 1918. Pp. 128.)

Man's Supreme Inheritance. By F. MATHIAS ALEXANDER. (E. P. Dutton and Company. 1918.)

While we are living under the shadow of the greatest world tragedy in the history of mankind, many books are being written about it, and most of them give us ideas and thoughts which are more or less valuable. Professor Adkins in four chapters covers the underlying causes of the conflict. He points out those problems and rivalries which have arisen during the past three centuries. He shows how they steadily increased in importance until they culminated in hostilities in 1914. Professor Adkins aims rather at provoking thought than of imparting exact information, and wins in his effort to make readers of his book think and inquire for themselves about the war and its effects.

Edward Howard Griggs, in his *Soul of Democracy*, covers twenty-two chapters in less than 150 pages. Each of these chapters is of sufficient importance to have space enough for a volume. In fact whole volumes have been written on each chapter during the past year. He covers feminism, religion, education, literature and socialism. The author believes that our education has been too academic and too much molded by tradition. He says: "If there is one field where we could reasonably expect to find pure democracy, it is in our higher educational institutions. In a college or university, where a group of young men and women, and a group of older men and women are gathered apart, out of the severer economic struggle, dedicated to ideal ends: there, surely, we could expect pure democracy in organization and re-

lationship; yet the tendency has been steadily toward autocracy. One can count the fingers of both hands and not cover the list of college and university presidents who have taken office during the last fifteen years only on condition that they have complete authority over the educational policy of the institution, and often over its financial policy as well. The reason is obvious: We run a railroad efficiently by getting a good president; why not a university? The real evil is in the effect upon the rank and file of those governed by the autocrat." He lauds the German university system with its self-governing faculty.

Conscious guidance and control in relation to human evolution in civilization is the subject upon which F. Mathias Alexander writes in his book *Man's Supreme Inheritance.* Many persons have pointed out the strain which has come upon human nature in the change from a state of animal savagery to present civilization. John Dewey, who has written an introduction for the book, says: "No one, it seems to me, has grasped the meaning, dangers and possibilities of this change more lucidly and completely than Mr. Alexander." Mr. Alexander offers quite an original thesis which is concerned with all the problems of life, education and evolution, with the shortcomings of civilization as indicated by the present great war. His discussions breathe great reverence and a sort of religious attitude toward the body. When such a religious attitude toward the body becomes more general we shall have an atmosphere favorable to securing the conscious control which is urged.

J. E. Oster.

College of the City of New York.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BEATRICE OWENS

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